

DOCUMENT RESUME

ED 116 400

EC 080 792

TITLE Extension of Education of the Handicapped Act:
Hearings Before the Subcommittee on Select Education
of the Committee on Education and Labor, House of
Representatives, 94th Congress, 1st Session on Part
X, Education and Training of the Handicapped and H.R.
7217, Education for All Handicapped Children Act of
1975 (April 9 and 10, and June 9, 1975).

INSTITUTION Congress of the U.S., Washington, D.C. House
Committee on Education and Labor.

PUB DATE 75

NOTE 242p.

EDRS PRICE MF-\$0.76 HC-\$12.05 Plus Postage

DESCRIPTORS *Equal Education; Exceptional Child Education;
*Federal Aid; *Federal Legislation; *Handicapped
Children

IDENTIFIERS Education for All Handicapped Children Act 1975;
Education of the Handicapped Act

ABSTRACT

Presented is the text of hearings in the House of Representatives on Part X of the "Education and Training of the Handicapped Act" and the "Education for All Handicapped Children Act of 1975". Included are the texts of both bills and statements by persons such as Edwin Martin of the Bureau of Education for the Handicapped, Carl Megel of the American Federation of Teachers, and Frederick Weintraub of the Council for Exceptional Children. Prepared statements and supplemental materials, and letters include information on estimated number of handicapped children served and unserved, cost analysis of special education programs, and the status of state education programs for handicapped children. (DB)

* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *

EXTENSION OF EDUCATION OF THE HANDICAPPED ACT

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

EC

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION
OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

PART X.

Education and Training of the Handicapped and H.R. 7217,
Education for All Handicapped Children Act of 1975.

HEARINGS HELD IN WASHINGTON, D.C.
APRIL 9 AND 10, 1975, AND JUNE 9, 1975

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1975

42-322 O

COMMITTEE ON EDUCATION AND LABOR

CARL D. PERKINS, Kentucky, *Chairman*

FRANK THOMPSON, Jr., New Jersey
JOHN H. DENT, Pennsylvania
DOMINICK V. DANIELS, New Jersey
JOHN BRADEMÁS, Indiana
JAMES G. O'HARA, Michigan
AUGUSTUS F. HAWKINS, California
WILLIAM D. FORD, Michigan
PATSY T. MINK, Hawaii, (on leave)
LLOYD MEEDS, Washington
PHILLIP BURTON, California
JOSEPH M. GAYDOS, Pennsylvania
WILLIAM "BILL" CLAY, Missouri
SHIRLEY CHISHOLM, New York
MARIO BIAGGI, New York
IKE ANDREWS, North Carolina
WILLIAM LEHMAN, Florida
JAIME BENITEZ, Puerto Rico
MICHAEL T. BLOUIN, Iowa
ROBERT J. CORNELL, Wisconsin
THEODORE M. (Ted) RISENHOOVER,
Oklahoma
PAUL SIMON, Illinois
EDWARD BEARD, Rhode Island
LEO C. ZEFERETTI, New York
GEORGE MILLER, California
RONALD M. MOTTL, Ohio
TIM L. HALL, Illinois

ALBERT H. QUIE, Minnesota
JOHN M. ASHBROOK, Ohio
ALPHONZO BELL, California
JOHN N. ERLÉNBOHN, Illinois
MARVIN L. ESCH, Michigan
EDWIN D. ESHLEMAN, Pennsylvania
PETER A. PEYSER, New York
RONALD A. SARASIN, Connecticut
JOHN BUCHANAN, Alabama
JAMES M. JEFFORDS, Vermont
LARRY PRESSLER, South Dakota
WILLIAM F. GOODLING, Pennsylvania
VIRGINIA SMITH, Nebraska

SUBCOMMITTEE ON SELECT EDUCATION

JOHN BRADEMÁS, Indiana, *Chairman*

PATSY T. MINK, Hawaii (on leave)
LLOYD MEEDS, Washington
SHIRLEY CHISHOLM, New York
WILLIAM LEHMAN, Florida
ROBERT CORNELL, Wisconsin
EDWARD BEARD, Rhode Island
LEO C. ZEFERETTI, New York
GEORGE MILLER, California
TIM L. HALL, Illinois
CARL D. PERKINS, Kentucky, *ex officio*

ALPHONZO BELL, California
PETER A. PEYSER, New York
JAMES M. JEFFORDS, Vermont
LARRY PRESSLER, South Dakota
ALBERT H. QUIE, Minnesota, *ex officio*

(II)

CONTENTS

Hearings held in Washington, D.C.:

	Page
April 9, 1975.....	1
April 10, 1975.....	51
June 9, 1975.....	103
Text of part X—Education and Training of the Handicapped.....	2
Text of H.R. 7217.....	104

Statement of—

Bell, Hon. Terrel H., U.S. Commissioner of Education, Department of Health, Education, and Welfare, accompanied by: Richard A. Hastings, Acting Deputy Assistant Secretary for Legislation (Education), DHEW; and Edwin W. Martin, Jr., Deputy Commissioner, Bureau of Education for the Handicapped.....	135
Harris, James A., president of the National Education Association.....	17
Megel, Carl J., director of legislation, American Federation of Teachers, AFL-CIO.....	46
Schifter, Richard, vice president, Maryland State Board of Education.....	79
Smith, George, Superintendent, San Diego School Board.....	53
Statement of the Consortium Concerned with the Developmentally Disabled presented by: Walter Cegalka, National Association of Retarded Citizens; Dudley Kontz, United Cerebral Palsy; Beverly Rowan, the Joseph Kennedy Foundation; and Janet Rhoads, American Occupational Therapy Association.....	91
Steinhilber, August W., assistant executive director, office of Federal relations, National School Boards Association.....	76
Weintraub, Frederick J., assistant executive director, Council for Exceptional Children.....	31
Prepared statements, letters, supplemental materials etc.:	
Bell, Hon. T. H., U.S. Commissioner of Education, Department of Health, Education, and Welfare, prepared statement of.....	133
Excerpt from Congressional Record, June 11, 1974.....	82
Harris, James A., president, National Education Association:	
Estimated number of handicapped children served and unserved by type of handicap (table).....	20
Prepared statement.....	16
McIntyre, Francis X., assistant state superintendent for the division of special education, Maryland State Department of Education, prepared statement of.....	89
Smith, George, Superintendent, San Diego School Board:	
Cost analysis of special education programs.....	58
Questions and answers requested of George Smith.....	65
Steinhilber, August W., assistant executive director, office of Federal relations, prepared statement of.....	69
Weintraub, Frederick J., assistant executive director for governmental relations, The Council for Exceptional Children, Reston, Va., prepared statement of.....	28

(III)

IV

APPENDIX

American Occupational Therapy Association, prepared statement of	Page
Bell, T. H., U.S. Commissioner of Education, Department of Health, Education, and Welfare, letter to Chairman Brademas, dated April 7, 1975.	175
Council for Exceptional Children:	169
A continuing summary of pending and completed litigation regarding the education of handicapped children, a summary.	191
State statutory responsibilities for the education of handicapped children (chart)	189
"Status of State Education Programs for Handicapped Children," article entitled.	177
Weintraub, Frederick J., director, Governmental relations, Council for Exceptional Children, article entitled, "New Education Policies for the Handicapped: The Quiet Revolution,"	169

EXTENSION OF EDUCATION OF THE HANDICAPPED ACT

WEDNESDAY, APRIL 9, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SELECT EDUCATION
OF THE COMMITTEE ON EDUCATION AND LABOR
Washington, D.C.

The subcommittee met at 9:40 a.m., pursuant to notice, in room 2261, Rayburn House Office Building, Hon. John Brademas (chairman of the subcommittee) presiding.

Present: Representatives Brademas, Lehman, Cornell, Miller, Bell, Peyser and Jeffords.

Staff Present: Jack Duncan, counsel, Patricia Watts, administrative assistant, and Martin LaVer, minority legislative associate.

Mr. BRADEMAs. The subcommittee on Select Education of the Committee on Education and Labor will come to order for the purpose of continuing hearings on legislation to provide additional and improved Federal assistance for educational services for America's handicapped children.

There are today approximately 7 million handicapped children in our society including 1 million preschool age children suffering from such disabilities as deafness, blindness, retardation, speech or motor impairment and emotional disturbances.

Our neglect of these children has been startling. Fully 1 million of the 6 million school aged handicapped children are denied entrance to any publicly supported education, and only 40 percent of these children are receiving special educational services appropriate to their needs.

Clearly, we can afford to do better and surely we must do better.

During the two days of hearings we have scheduled this week, the subcommittee will hear from representatives of the education community and parents of handicapped children. It is my hope that this subcommittee will expeditiously consider this urgently needed legislation.

[Text of Part X—Education and Training of the Handicapped follows.]

(1)

PART X—EDUCATION AND TRAINING OF THE HANDICAPPED

EDUCATION OF THE HANDICAPPED ACT¹

PART A—GENERAL PROVISIONS

SHORT TITLE

SEC. 601. This title may be cited as the "Education of the Handicapped Act".

DEFINITION

SEC. 602. As used in this title—

(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

(2) The term "Commissioner" means the Commissioner of Education.

(3) The term "Advisory Committee" means the National Advisory Committee on Handicapped Children.

(4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

(5) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands and the Trust Territory of the Pacific Islands.

(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

¹ Public Law 89-750 amended the Elementary and Secondary Education Act of 1965 by adding a new title VI; effective July 1, 1971, this act ((P.L. 92-230) replaces title VI. Also as of July 1, 1971, the Education of the Handicapped Act will supersede the following: P.L. 80-538, Handicapped Children's Early Education Assistance Act; P.L. 85-926, Grants for Teaching in the Education of Handicapped Children; P.L. 88-104, titles III and V of the Mental Retardation Facilities and Community Mental Centers Construction Act of 1968; and P.L. 85-905, Instructional Media for Handicapped Children.

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered.

(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

(14) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage.

(20 U.S.C. 1401) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 602, 84 Stat. 175.

BUREAU FOR EDUCATION AND TRAINING OF THE HANDICAPPED¹

SEC. 603. (a) There shall be, within the Office of Education, a bureau for the education and training of the handicapped which shall be the principal agency in the Office of Education for administering and carrying out programs and projects

¹ Section 612(b)(1) of P.L. 93-380 provides as follows:

"(b)(1) The positions created by subsection (b) of section 603 of the Education of the Handicapped Act shall be in addition to the number of positions placed in the appropriate grades under section 5108 of title 5, United States Code, and such positions shall be in addition to, and without prejudice against, the number of positions otherwise placed in the Office of Education under such section 5108 or under other law. Nothing in this section shall be deemed as limiting the Commissioner from assigning additional General Schedule positions in grades 16, 17, and 18 to the Office should he determine such additions to be necessary to operate programs for educating handicapped children authorized by this Act."

relating to the education and training of the handicapped, including programs and projects for the training of teachers of the handicapped and for research in such education and training.

(b)(1) The Bureau established under subsection (a) shall be headed by a Deputy Commissioner of Education who shall be appointed by the Commissioner, who shall report directly to the Commissioner, be compensated at the rate specified for, and placed in, grade 18 of the General Schedule set forth in section 5332 of title 5, United States Code.

(2) In addition to such Deputy Commissioner, there shall be placed in such Bureau five positions for persons to assist the Deputy Commissioner in carrying out his duties, including the position of Associate Deputy Commissioner, and such positions shall be placed in grade 16 of the General Schedule set forth in section 5332 of title 5, United States Code.

(20 U.S.C. 1402) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 603; 84 Stat. 177; amended August 21, 1974, P.L. 93-380, sec. 612(a), 88, Stat. 579, 580.

NATIONAL ADVISORY COMMITTEE ON HANDICAPPED CHILDREN

SEC. 604. (a) The Commissioner shall establish in the Office of Education a National Advisory Committee on Handicapped Children, consisting of fifteen members, appointed by the Commissioner. At least eight of such members shall be persons affiliated with educational, training, or research programs for the handicapped.

(b) The Advisory Committee shall review the administration and operation of the programs authorized by this title and other provisions of law administered by the Commissioner with respect to handicapped children, including their effect in improving the educational attainment of such children, and make recommendations for the improvement of such administration, and operation with respect to such children. Such recommendations shall take into consideration experience gained under this and other Federal programs for handicapped children and, to the extent appropriate, experience gained under other public and private programs for handicapped children. The Advisory Committee shall from time to time make such recommendations as it may deem appropriate to the Commissioner and shall make an annual report of its findings and recommendations to the Commissioner not later than March 31 of each year. The Commissioner shall transmit each such report to the Secretary together with his comments and recommendations, and the Secretary shall transmit such report, comments, and recommendations to the Congress together with any comments or recommendations he may have with respect thereto.

The Advisory Committee shall continue to exist until July 1, 1977.

(c) There are authorized to be appropriated for the purposes of this section \$100,000 for the fiscal year ending June 30, 1974, and for each of the three succeeding fiscal years.

(20 U.S.C. 1403) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 604, 84 Stat. 177; amended August 21, 1974, P.L. 93-380, sec. 613, 88 Stat. 580.

ACQUISITION OF EQUIPMENT AND CONSTRUCTION OF NECESSARY FACILITIES

SEC. 605. (a) In the case of any program authorized by this title, if the Commissioner determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, he may authorize the use of such funds for such purposes.

(b) If within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this title the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

(20 U.S.C. 1404) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 605. 84 Stat. 177.

PART B—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

AUTHORIZATION

SEC. 611. (a) The Commissioner is authorized to make grants pursuant to the provisions of this part for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels.¹

(b) For the purpose of making grants under this part there is authorized to be appropriated \$200,000,000 for the fiscal year ending June 30, 1971, \$210,000,000 for the fiscal year ending June 30, 1972, and \$220,000,000 for the fiscal year ending June 30, 1973.²

(20 U.S.C. 1411) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 611, 84 Stat. 178.

(NOTE.—Section 614(a) of P.L. 93-380 provides that, effective for fiscal year 1975 only, section 611 of the Education of the Handicapped Act is amended as follows:)

Grants to States for Education of Handicapped Children

SEC. 611. (a) The Commissioner shall, in accordance with the provisions of this part, make payments to States for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels in order to provide full educational opportunities to all handicapped children. Such payments may be used for the early identification and assessment of handicapping conditions in children under three years of age.

(b)(1) Subject to the provisions of section 612, the maximum amount of the grant to which a State shall be entitled under this part shall be equal to—

(A) the number of children aged three to twenty-one inclusive, in that State in the most recent fiscal year for which satisfactory data are available; multiplied by—

(B) \$8.75.

(2) For the purpose of this subsection, the term "State" does not include the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c)(1) The jurisdictions to which this subsection applies are the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall, for the fiscal year ending June 30, 1975, be entitled to a grant in an amount equal to an amount determined by the Commissioner, in accordance with criteria established by regulations, needed to initiate, expand, or improve programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels, in that jurisdiction, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 2 per centum of the aggregate of the amounts to which all States are entitled under subsection (b) of this section for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 2 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 2 per centum limitation.

(d) The Commissioner is authorized for the fiscal year ending June 30, 1975, to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior, and the terms upon which payments for such purposes shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this part. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts to which States are entitled under subsection (b) of this section for that fiscal year.

¹ Section 614(e)(1) of P.L. 93-380 adds the following words to the end of this sentence, effective July 1, 1975: "in order to provide full educational opportunity to all handicapped children."

² Effective July 1, 1975, subsection (b) is amended to read as follows:

"(b) For the purpose of making grants under this part there are authorized to be appropriated \$100,000,000 for the fiscal year ending June 30, 1976, and \$110,000,000 for the fiscal year ending June 30, 1977."

ALLOTMENT OF FUNDS

SEC. 612. (a)(1) There is hereby authorized to be appropriated for each fiscal year for the purposes of this paragraph an amount equal to not more than 3¹ per centum of the amount appropriated for such year for payments to States under section 611(b). The Commissioner shall allot the amount appropriated pursuant to this paragraph among—

(A) Puerto Rico,² Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands, according to their respective needs, and

(B) for each fiscal year ending prior to July 1, 1977, the Secretary of the Interior, according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior and the terms upon which payments for such purposes shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this part.

(2) From the total amount appropriated pursuant to section 611(b) for any fiscal year the Commissioner shall allot to each State an amount which bears the same ratio to such amount as the number of children aged three to twenty-one, inclusive, in the State bears to the number of such children in all the States, except that no State shall be allotted less than \$200,000³ or three-tenths of 1 per centum of such amount available for allotment to the States, whichever is greater. For purposes of this paragraph and subsection (b), the term "State" shall not include the Commonwealth of Puerto Rico,³ Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.⁴

(b) The number of children aged three to twenty-one, inclusive, in any State and in all the States shall be determined, for purposes of this section, by the Commissioner on the basis of the most recent satisfactory data available to him.

(c) The amount of any State's allotment under subsection (a) for any fiscal year which the Commissioner determines will not be required for that year shall be available for reallocation, from time to time and on such dates during such year as the Commissioner may fix, to other States in proportion to the original allotments to such States under subsection (a) for that year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Commissioner estimates such State needs and will be able to use for such year; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount reallocated to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for that year.

(20 U.S.C. 1412) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 612 84 Stat. 178; amended June 23, 1972, P.L. 92-318, sec. 421(b)(1)(C), 86 Stat. 341; amended August 21, 1974, P.L. 93-380, sec. 614(b)(1), 88 Stat. 582.

(NOTE: Section 614(b) of P.L. 93-380 provides that, effective for fiscal year 1975 only, section 612 of the Education of the Handicapped Act is amended as follows):

ALLOCATIONS OF APPROPRIATIONS

Sec. 612. (a) *Sums appropriated for the fiscal year ending June 30, 1975, shall be made available to States and allocated to each State, on the basis of unsatisfied entitlements under section 611, in an amount equal to the amount it received from the appropriation for this part for the fiscal year 1974.*

(b) Any sums appropriated to carry out this part for any fiscal year which remain after allocations under subsection (a) of this section shall be made to States in accordance with entitlements created under section 611 (to the extent that such entitlements are unsatisfied) ratably reduced.

(c) In the event that funds become available for making payments under this part for any fiscal year after allocations have been made under subsections (a) and (b) for that year, the amounts reduced under subsection (b) shall be increased on the same basis as they were reduced.

¹ Effective after June 30, 1975, limited to 1 per centum (sec. 843(b)(3), P.L. 93-380).

² Effective after June 30, 1975, Puerto Rico is deleted from this list (sec. 843(b)(1), P.L. 93-380).

³ \$300,000 on and after July 1, 1975 (sec. 615(a)(1), P.L. 93-380) if state allocations for Part B are \$45,000,000 or more (sec. 615(d), P.L. 93-380).

⁴ Effective on and after July 1, 1975, the following subsection (3) is added to sec. 612(a): "(3) No State shall, in any fiscal year, be required to expend amounts allotted pursuant to this section to carry out the provisions of paragraph (1) of section 612(b) unless that State receives an amount greater than the amount allotted to that State for the fiscal year ending June 30, 1973." (Sec. 615(a)(2), P.L. 93-380.)

STATE PLANS

SEC. 613. (a) Any State which *desires to receive grants*¹ under this part shall submit to the Commissioner through its State educational agency a State plan (not part of any other plan) in such detail as the Commissioner deems necessary. Such State plan shall—

(1) set forth such policies and procedures as will provide satisfactory assurance that funds paid to the State under this part will be expended (A) either directly or through individual, or combinations of, local educational agencies, solely to initiate, expand, or improve programs and projects, including pre-school programs and projects, (i) which are designed to meet the special educational and related needs of handicapped children throughout the State, and (ii) which are of sufficient size, scope, and quality (taking into consideration the special educational needs of such children) as to give reasonable promise of substantial progress toward meeting those needs, and (B) for the proper and efficient administration of the State plan (including State leadership activities and consultative services), and for planning on the State and local level: *Provided*, That the amount expended for such administration and planning shall not exceed 5 per centum of the amount allotted to the State for any fiscal year or \$200,000² (\$35,000 in the case of the Commonwealth of Puerto Rico,³ Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), whichever is greater;

(2) provide satisfactory assurance, that to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision will be made for participation of such children in programs assisted or carried out under this part;

(3) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

(4) set forth policies and procedures which provide satisfactory assurance that Federal funds made available under this part will be so used as to supplement and, to the extent practical, increase the level of State, local, and private funds expended for the education of handicapped children, and in no case supplant such State, local and private funds;

(5) provide that effective procedures, including provision for appropriate objective measurements of educational achievement, will be adopted for evaluating at least annually the effectiveness of the programs in meeting the special educational needs of, and providing related services for, handicapped children;

(6) provide that the State educational agency will be the sole agency for administering or supervising the administration of the plan;

(7) provide for (A) making such reports, in such form and containing such information, as the Commissioner may require to carry out his functions under this part, including reports of the objective measurements required by clause (5) of this subsection, and (B) keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

(8) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies;

(9) provide satisfactory assurance that funds paid to the State under this part shall not be made available for handicapped children eligible for assistance under section 103(a)(5) of title I of the Elementary and Secondary Education Act of 1965;

(10) provide satisfactory assurance that effective procedures will be adopted for acquiring and disseminating to teachers of, and administrators of programs for, handicapped children significant information derived from educational

¹ Effective for fiscal year 1975 only, these words are amended to read "is entitled to receive payments." (Section 614(c), P.L. 93-380.)

² \$100,000 in any year when State allocations for Part B of the EHA are not at least \$45,000,000. (Sec. 615(d), P.L. 93-380.)

³ Effective after June 30, 1975, Puerto Rico is deleted from this listing. (Sec. 843(b)(2), P.L. 93-380.)

research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects;

(11) contain a statement of policies and procedures which will be designed to insure that all education programs for the handicapped in the State will be properly coordinated by the persons in charge of special education programs for handicapped children in the State educational agency;

(12)(A) establish a goal of providing full educational opportunities to all handicapped children, and (B) provide for a procedure to assure that funds expended under this part are used to accomplish the goal set forth in (A) of this paragraph, and priority in the utilization of funds under this part will be given to handicapped children who are not receiving an education; and

(13) provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement of handicapped children including, but not limited to (A)(i) prior notice to parents or guardians of the child when the local or State educational agency proposes to change the educational placement of the child, (ii) an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child, (iii) procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State including the assignment of an individual (not to be an employee of the State or local educational agency involved in the education or care of children) to act as a surrogate for the parents or guardians, and (iv) provision to insure that the decisions rendered in the impartial due process hearing required by this paragraph shall be binding on all parties subject only to appropriate administrative or judicial appeal; and (B) procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and (C) procedures to insure the testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

(b)(1) Any State which desires to receive a grant under this part for any fiscal year beginning after June 30, 1973, shall submit to the Commissioner for approval not later than one year after the enactment of the Education of the Handicapped Amendments of 1974, through its State educational agency an amendment to the State plan required under subsection (a), setting forth in detail the policies and procedures which the State will undertake in order to assure that—

(A) all children residing in the State who are handicapped regardless of the severity of their handicap and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(B) policies and procedures will be established in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of such data and information by the State;

(C) there is established (i) a goal of providing full educational opportunities to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal; and

(D) the amendment submitted by the State pursuant to this subsection shall be available to parents and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commissioner.

For the purpose of this part, any amendment to the State plan required by this subsection and approved by the Commissioner shall be considered, after June 30, 1975, as a required portion of the State plan.

(2) The requirement of paragraph (1) of this subsection shall not be effective with respect to any fiscal year in which the aggregate of the amounts allotted to the State for this part for that fiscal year is less than \$45,000,000.

(c) The Commissioner shall approve any State plan which he determines meets the requirements and purposes of this part.

(d)(1) The Commissioner shall not approve any State plan pursuant to this section for any fiscal year unless the plan has, prior to its submission, been made public as a separate document by the State educational agency and a reasonable opportunity has been given by that agency for comment thereon by interested persons (as defined by regulation). The State educational agency shall make public the plan as finally approved. The Commissioner shall not finally disapprove any plan submitted under this section or any modification thereof, without first affording the State educational agency submitting the plan reasonable notice and opportunity for a hearing.

(2) Whenever the Commissioner, after reasonable notice and opportunity for hearing to such State agency, finds—

(A) that the State plan has been so changed that it no longer complies with the provisions of this part, or

(B) that in the administration of the plan there is a failure to comply substantially with any such provision or with any requirements set forth in the application of a local educational agency approved pursuant to such plan,

the Commissioner shall notify the agency that further payments will not be made to the State under this part (or in his discretion, that further payments to the State will be limited to programs or projects under the State plan, or portions thereof, not affected by the failure, or that the State educational agency shall not make further payments under this part to specified local agencies affected to the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, the Commissioner shall make no further payments to the State under this part (or shall limit payments to programs or projects under, or parts of, the State plan not affected by the failure, or payments by the State educational agency under this part shall be limited to local educational agencies not affected by the failure, as the case may be).

(e)(1) If any State is dissatisfied with the Commissioner's final action with respect to the approval of its State plan submitted under subsection (a) or with his final action under subsection (d), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 1413) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 613, 84 Stat. 179; amended August 21, 1974, P.L. 93-380, sec. 614(d), 88 Stat. 581-582.

PAYMENTS

Sec. 614. From the amounts allotted to each State under this part, the Commissioner shall pay to that State an amount equal to the amount expended by the State in carrying out its State plan.

(20 U.S.C. 1414) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 614, 84 Stat. 181.

**PART C—CENTERS AND SERVICES TO MEET SPECIAL NEEDS
OF THE HANDICAPPED**

REGIONAL RESOURCE CENTERS

SEC. 621. (a) The Commissioner is authorized to make grants to or contract^s with institutions of higher education, State educational agencies, or combinations of such agencies or institutions, which combinations may include one or more local educational agencies, within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional centers which will develop and apply the best methods of appraising the special educational needs of handicapped children referred to them and will provide other services to assist in meeting such needs. Centers established or operated under this section shall (1) provide testing and educational evaluation to determine the special educational needs of handicapped children referred to such centers, (2) develop educational programs to meet those needs, and (3) assist schools and other appropriate agencies, organizations, and institutions in providing such educational programs through services such as consultation (including, in appropriate cases, consultation with parents or teachers of handicapped children at such regional centers), periodic reexamination and reevaluation of special educational programs, and other technical services.

(b) In determining whether to approve an application for a project under this section, the Commissioner shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to develop and apply, with the assistance of funds under this section, new methods, techniques, devices, or facilities relating to educational evaluation or education of handicapped children.

(20 U.S.C. 1421) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 621, 84 Stat. 181.

CENTERS AND SERVICES FOR DEAF-BLIND CHILDREN

SEC. 622. (a) It is the purpose of this section to provide, through a limited number of model centers for deaf-blind children, a program designed to develop and bring to bear upon such children, beginning as early as feasible in life, those specialized, intensive professional and allied services, methods, and aids that are found to be most effective to enable them to achieve their full potential for communication with, and adjustment to, the world around them, for useful and meaningful participation in society, and for self-fulfillment.

(b) The Commissioner is authorized, upon such terms and conditions (subject to the provisions of subsection (b) (1) of this section) as he deems appropriate to carry out the purposes of this section, to make grants to or contracts with public or nonprofit private agencies, organizations, or institutions to pay all or part of the cost of establishment, including construction, which for the purposes of this section shall include the construction of residential facilities, and operation of centers for deaf-blind children.

(c) In determining whether to make a grant or contract under subsection (b), the Commissioner shall take into consideration the need for a center for deaf-blind children in the light of the general availability and quality of existing services for such children in the part of the country involved.

(d) (1) A grant or contract pursuant to subsection (b) shall be made only if the Commissioner determines that there is satisfactory assurance that the center will provide such services as he has by regulation prescribed, including at least—

(A) comprehensive diagnostic and evaluative services for deaf-blind children;

(B) a program for the adjustment, orientation, and education of deaf-blind children which integrates all the professional and allied services necessary therefor; and

(C) effective consultative services for parents, teachers, and others who play a direct role in the lives of deaf-blind children to enable them to understand the special problems of such children and to assist in the process of their adjustment, orientation, and education.

(2) Any such services may be provided to deaf-blind children (and, where applicable, other persons) regardless of whether they reside in the center, may be provided at some place other than the center, and may include the provision of transportation for any such children (including an attendant) and for parents.

(20 U.S.C. 1422) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 622, 84 Stat. 182.

EARLY EDUCATION FOR HANDICAPPED CHILDREN

SEC. 623. (a) The Commissioner is authorized to arrange by contract, grant, or otherwise with appropriate public agencies and private nonprofit organizations, for the development and carrying out by such agencies and organizations of experimental preschool and early education programs for handicapped children which the Commissioner determines show promise of promoting a comprehensive and strengthened approach to the special problems of such children. Such programs shall be distributed to the greatest extent possible throughout the Nation, and shall be carried out both in urban and in rural areas. Such programs shall include activities and services designed to (1) facilitate the intellectual, emotional, physical, mental, social, and language development of such children; (2) encourage the participation of the parents of such children in the development and operation of any such program; and (3) acquaint the community to be served by any such program with the problems and potentialities of such children.

(b) Each arrangement for developing or carrying out a program authorized by this section shall provide for the effective coordination of each such program with similar programs in the schools of the community to be served by such a program.

(c) No arrangement pursuant to this section shall provide for the payment of more than 90 per centum of the cost of developing, carrying out, or evaluating such a program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services.

(20 U.S.C. 1423) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 623, 84 Stat. 183.

RESEARCH, INNOVATION, TRAINING, AND DISSEMINATION ACTIVITIES IN CONNECTION WITH CENTERS AND SERVICES FOR THE HANDICAPPED

SEC. 624. (a) The Commissioner is authorized, either as part of any grant or contract under this part, or by separate grant to, or contract with, an agency, organization, or institution operating a center or providing a service which meets such requirements as the Commissioner determines to be appropriate, consistent with the purposes of this part, to pay all or part of the cost of such activities as—

(1) research to identify and meet the full range of special needs of handicapped children;

(2) development or demonstration of new, or improvements in existing methods, approaches, or techniques, which would contribute to the adjustment and education of such children;

(3) training (either directly or otherwise) of professional and allied personnel engaged or preparing to engage in programs specifically designed for such children, including payment of stipends for trainees and allowances for travel and other expenses for them and their dependents; and

(4) dissemination of materials and information about practices found effective in working with such children.

(b) In making grants and contracts under this section, the Commissioner shall insure that the activities funded under such grants and contracts will be coordinated with similar activities funded from grants and contracts under other parts of this title.

(20 U.S.C. 1424) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 624, 84 Stat. 183.

REGIONAL EDUCATION PROGRAMS

SEC. 625. (a) The Commissioner is authorized to make grants to or contracts with institutions of higher education, including junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development and operation of specially designed or modified programs of vocational, technical, postsecondary, or adult education for deaf or other handicapped persons.

(b) In making grants or contracts authorized by this section the Commissioner shall give priority consideration to—

(1) programs serving multistate regions or large population centers;

(2) programs adapting existing programs of vocational, technical, postsecondary, or adult education to the special needs of handicapped persons; and

(3) programs designed to serve areas where a need for such services is clearly demonstrated.

(c) For purposes of this section, the term "handicapped persons" means persons who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, crippled, or in other ways health impaired and by reason thereof require special education programming and related services. (20 U.S.C. 1424a) Enacted Aug. 21, 1974, P.L. 93-380, sec. 616, 88 Stat. 584.

EVALUATIONS

SEC. 626. The Commissioner shall conduct, either directly or by contract with independent organizations, a thorough and continuing evaluation of the effectiveness of each program assisted under this part.

(20 U.S.C. 1425) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 625, 84 Stat. 183; renumbered August 21, 1974, P.L. 93-380, sec. 616, 88 Stat. 584.

AUTHORIZATION OF APPROPRIATIONS

SEC. 627. There are authorized to be appropriated to carry out the provisions of section 621, \$12,500,000 for the fiscal year ending June 30, 1975, \$18,000,000 for the fiscal year ending June 30, 1976, and \$19,000,000 for the fiscal year ending June 30, 1977. There are authorized to be appropriated to carry out the provisions of section 622, \$15,000,000 for the fiscal year ending June 30, 1975, \$20,000,000 for the fiscal year ending June 30, 1976, and for the succeeding fiscal year. There are authorized to be appropriated to carry out the provisions of section 623, \$25,500,000 for the fiscal year ending June 30, 1975, \$36,000,000 for the fiscal year ending June 30, 1976, and \$38,000,000 for the fiscal year ending June 30, 1977. There are authorized to be appropriated to carry out the provisions of section 625, \$1,000,000 for the fiscal year ending June 30, 1975, and such sums as may be necessary for each of the two succeeding fiscal years.

(20 U.S.C. 1426) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 626, 84 Stat. 184; renumbered and amended August 21, 1974, P.L. 93-380, sec. 616 and 617, 88 Stat. 584.

PART D—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION AND OTHER APPROPRIATE INSTITUTIONS OR AGENCIES

SEC. 631. The Commissioner is authorized to make grants to institutions of higher education and other appropriate nonprofit institutions or agencies to assist them—

(1) in providing training of professional personnel to conduct training of teachers and other specialists in fields related to the education of handicapped children;

(2) in providing training for personnel engaged or preparing to engage in employment as teachers of handicapped children, as supervisors of such teachers, or as speech correctionists or other special personnel providing special services for the education of such children, or engaged or preparing to engage in research in fields related to the education of such children; and

(3) in establishing and maintaining scholarships, with such stipends and allowances as may be determined by the Commissioner, for training personnel engaged in or preparing to engage in employment as teachers of the handicapped or as related specialists.

Grants under this subsection may be used by such institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Commissioner.

(20 U.S.C. 1431) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 631, 84 Stat. 184.

GRANTS TO STATE EDUCATIONAL AGENCIES

SEC. 632. The Commissioner is authorized to make grants to State educational agencies to assist them in establishing and maintaining, directly or through grants to institutions of higher education, programs for training personnel engaged, or preparing to engage, in employment as teachers of handicapped children or as supervisors of such teachers. Such grants shall also be available to assist such institutions in meeting the cost of training such personnel.

(20 U.S.C. 1432) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 632, 84 Stat. 184.

**GRANTS OR CONTRACTS TO IMPROVE RECRUITING OF EDUCATIONAL PERSONNEL,
AND TO IMPROVE DISSEMINATION OF INFORMATION CONCERNING EDUCATIONAL
OPPORTUNITIES FOR THE HANDICAPPED**

SEC. 633. The Commissioner is authorized to make grants to public or nonprofit private agencies, organizations, or institutions, or to enter into contracts with public or private agencies, organizations, or institutions, for projects for—

(1) encouraging students and professional personnel to work in various fields of education of handicapped children and youth through, among other ways, developing and distributing imaginative or innovative materials to assist in recruiting personnel for such careers, or publicizing existing forms of financial aid which might enable students to pursue such careers, or

(2) disseminating information about the programs, services, and resources for the education of handicapped children, or providing referral services to parents, teachers, and other persons especially interested in the handicapped.

(20 U.S.C. 1433) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 633, 84 Stat. 184.

TRAINING OF PHYSICAL EDUCATORS AND RECREATION PERSONNEL FOR HANDICAPPED CHILDREN

SEC. 634. The Commissioner is authorized to make grants to institutions of higher education to assist them in providing training for personnel engaged or preparing to engage in employment as physical educators or recreation personnel for handicapped children or as educators or supervisors of such personnel, or engaged or preparing to engage in research or teaching in fields related to the physical education or recreation of such children.

(20 U.S.C. 1434) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 634, 84 Stat. 185.

REPORTS

SEC. 635. Each recipient of a grant under this part during any fiscal year shall, after the end of such fiscal year, submit a report to the Commissioner. Such report shall be in such form and detail and contain such information as the Commissioner determines to be appropriate.

(20 U.S.C. 1435) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 635, 84 Stat. 185.

AUTHORIZATION OF APPROPRIATIONS

SEC. 636. There are authorized to be appropriated for carrying out the provisions of this part (other than section 633) \$45,000,000 for the fiscal year ending June 30, 1975, \$52,000,000 for the fiscal year ending June 30, 1976, and \$54,000,000 for the fiscal year ending June 30, 1977. There are authorized to be appropriated to carry out the provisions of section 633, \$500,000 for each of the fiscal years ending June 30, 1975, and June 30, 1976, and \$1,000,000 for the fiscal year ending June 30, 1977.

(20 U.S.C. 1436) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 636, 84 Stat. 185; amended August 21, 1974, P.L. 93-380, sec. 618, 88 Stat. 584, 585.

PART E—RESEARCH IN THE EDUCATION OF THE HANDICAPPED

**RESEARCH AND DEMONSTRATION PROJECTS IN EDUCATION OF
HANDICAPPED CHILDREN**

SEC. 641. The Commissioner is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes and to conduct research, surveys, or demonstrations, relating to education of handicapped children.

(20 U.S.C. 1441) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 641, 84 Stat. 185.

RESEARCH AND DEMONSTRATION PROJECTS IN PHYSICAL EDUCATION AND RECREATION FOR HANDICAPPED CHILDREN

SEC. 642. The Commissioner is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or

nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children. (20 U.S.C. 1442) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 642, 84 Stat. 185.

PANELS OF EXPERTS

SEC. 643. The Commissioner shall from time to time appoint panels of experts who are competent to evaluate various types of research or demonstration projects under this part, and shall secure the advice and recommendations of one such panel before making any grant under this part.

(20 U.S.C. 1443) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 643, 84 Stat. 185

AUTHORIZATION OF APPROPRIATIONS

SEC. 644. For the purpose of carrying out this part, there are authorized to be appropriated \$15,000,000 for the fiscal year ending June 30, 1975, \$20,000,000 for each of the fiscal years ending June 30, 1976, and June 30, 1977.

(20 U.S.C. 1444) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 644, 84 Stat. 186; amended August 21, 1974, P.L. 93-380, sec. 619, 88 Stat. 585.

PART F—INSTRUCTIONAL MEDIA FOR THE HANDICAPPED

PURPOSE

SEC. 651. (a) The purposes of this part are to promote—

(1) the general welfare of deaf persons by (A) bringing to such persons understanding and appreciation of those films which play such an important part in the general and cultural advancement of hearing persons, (B) providing through these films enriched educational and cultural experiences through which deaf persons can be brought into better touch with the realities of their environment, and (C) providing a wholesome and rewarding experience which deaf persons may share together; and

(2) the educational advancement of handicapped persons by (A) carrying on research in the use of educational media for the handicapped, (B) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of the handicapped, and (C) training persons in the use of educational media for the instruction of the handicapped.

(20 U.S.C. 1451) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 651, 84 Stat. 186.

CAPTIONED FILMS AND EDUCATIONAL MEDIA FOR HANDICAPPED PERSONS

SEC. 652. (a) The Commissioner shall establish a loan service of captioned films and educational media for the purpose of making such materials available in the United States for nonprofit purposes to handicapped persons, parents of handicapped persons, and other persons directly involved in activities for the advancement of the handicapped in accordance with regulations.

(b) The Commissioner is authorized to—

(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

(2) acquire by lease or purchase equipment necessary to the administration of this part;

(3) provide, by grant or contract, for the captioning of films;

(4) provide, by grant or contract, for the distribution of captioned films and other educational media and equipment through State schools for the handicapped and such other agencies as the Commissioner may deem appropriate to serve as local or regional centers for such distribution;

(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for the handicapped, for the production and distribution of educational and training films and other educational media for the handicapped and the training of persons in the use of such films and media, including the payment to those persons of

such stipends (including allowances for travel and other expenses of such persons and their dependents) as he may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

(6) utilize the facilities and services of other governmental agencies; and
(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations.

(20) U.S.C. 1452) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 652, 84 Stat. 186; amended August 21, 1974, P.L. 93-380, sec. 620, 88 Stat. 585.

NATIONAL CENTER ON EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED

Sec. 653. (a) The Secretary is authorized to enter into an agreement with an institution of higher education for the establishment and operation of a National Center on Educational Media and Materials for the Handicapped, which will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing and developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in the agreement. Such agreement shall—

(1) provide that Federal funds paid to the Center will be used solely for such purposes as are set forth in the agreement;

(2) authorize the Center, subject to the Secretary's prior approval, to contract with public and private agencies and organizations for demonstration projects; and

(3) provide for an annual report on the activities of the Center which will be transmitted to the Congress.

(b) In considering proposals from institutions of higher education to enter into an agreement under this subsection, the Secretary shall give preference to institutions—

(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).

(20 U.S.C. 1453) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 653, 84 Stat. 187.

AUTHORIZATION OF APPROPRIATIONS

Sec. 654. For the purposes of carrying out this part there are hereby authorized to be appropriated not to exceed \$18,000,000 for the fiscal year ending June 30, 1975, and \$22,000,000 for the fiscal year ending June 30, 1976, and for each succeeding fiscal year thereafter.

(20 U.S.C. 1454) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 654, 84 Stat. 187; amended August 21, 1974, P.L. 93-380, sec. 620(2) 88 Stat. 585.

PART G—SPECIAL PROGRAMS FOR CHILDREN WITH SPECIFIC LEARNING DISABILITIES

RESEARCH, TRAINING, AND MODEL CENTERS

Sec. 661. (a) The Commissioner is authorized to make grants to, and contracts with, institutions of higher education, State and local educational agencies, and other public and private educational and research agencies and organizations (except that no grant shall be made other than to a nonprofit agency or organization) in order to carry out a program of—

(1) research and related purposes relating to the education of children with specific learning disabilities;

(2) professional or advanced training for educational personnel who are teaching, or are preparing to be teachers, of, children with specific learning disabilities, or such training for persons who are, or are preparing to be, supervisors and teachers of such personnel; and

(3) establishing and operating model centers for the improvement of education of children with specific learning disabilities, which centers shall

(A) provide testing and educational evaluation to identify children with learning disabilities who have been referred to such centers, (B) develop and conduct model programs designed to meet the special educational needs of such children, (C) assist appropriate educational agencies, organizations, and

institutions in making such model programs available to other children with learning disabilities, and (D) disseminate new methods or techniques for overcoming learning disabilities to educational institutions, organizations, and agencies within the area served by such center and evaluate the effectiveness of the dissemination process. Such evaluations shall be conducted annually after the first year of operation of a center.

In making grants and contracts under this section the Commissioner shall give special consideration to applications which propose innovative and creative approaches to meeting the educational needs of children with specific learning disabilities, and those which emphasize the prevention and early identification of learning disabilities.

(b) In making grants and controls under this section, the Commissioner shall—

(1) for the purposes of clause (2) of subsection (a), seek to achieve an equitable geographical distribution of training programs and trained personnel throughout the Nation, and

(2) for the purposes of clause (3) of subsection (a), to the extent feasible, taking into consideration the appropriations pursuant to this section, seek to encourage the establishment of a model center in each of the States.

(c) For the purpose of making grants and contracts under this section there are there are authorized to be appropriated \$10,000,000 for the fiscal year ending June 30, 1975, \$20,000,000 for each of the fiscal years ending June 30, 1976, and June 30, 1977.

(20 U.S.C. 1461) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 661, 84 Stat. 187, 188; amended August 21, 1974, P.L. 93-380, sec. 621, 88 Stat. 585.

REPEALER

Sec. 662. Effective July 1, 1971, the following provisions of law are repealed:

(1) That part of section 1 of the Act of September 2, 1958 (Public Law 85-905), which follows the enacting clause and sections 2, 3, and 4 of such Act;

(2) The Act of September 6, 1958 (Public Law 85-926);

(3) Title VI of the Elementary and Secondary Education Act of 1965 (Public Law 89-10);

(4) Titles III and V of the Act of October 31, 1963 (Public Law 88-164); and

(5) The Act of September 30, 1968 (Public Law 90-538).

Mr. BRADEMAS. We are pleased this morning to have with us representatives of two major educational associations as well as the Council of Exceptional Children.

Our first witness is Mr. James A. Harris, president of the National Education Association. Mr. Harris, we are pleased to have you with us, and will you please proceed.

[Prepared statement of Mr. Harris follows:]

PREPARED STATEMENT OF JAMES A. HARRIS, PRESIDENT, NATIONAL EDUCATION ASSOCIATION

Mr. Chairman and Members of the Subcommittee, I am James A. Harris, President of the National Education Association, which represents 1.7 million professional teachers, each of whom comes into frequent, if not daily, contact, with youth who have serious learning disabilities because of one or more emotional, physical, or mental handicap(s). We are extremely pleased that this Subcommittee is again designing legislation to deal with an area that is replete with neglect and in some instances a total disregard for the basic needs of handicapped youth. There are some 7.8 million youth in this country with handicapping conditions, half of whom are not being provided a program that meets their basic educational needs.

We urge the Subcommittee to move as expeditiously as possible through the legislative process a comprehensive document that fulfills the basic, unmet needs of all of the nation's handicapped youngsters. The handicapped youth of our affluent society should not be made to suffer the extreme pains of despair and educational neglect due to counterproductive political hang-ups.

In the event Congress does not enact new legislation within a reasonable amount of time, we then suggest that the "Randolph Amendment," S. 1264, now pending before the Senate Subcommittee on Handicapped, which extends for two years the so-called "Mathias Amendment" to the "Education Amendments of 1974", Title VI-B, Education of the Handicapped Act, be approved.

Should Congress grant the requested two-year extension of the "Randolph Amendment" to the "Mathias Amendment" with an authorization of \$680 million, we sincerely hope that the appropriations process does not lag too far behind in dealing with the educational needs of approximately eight million handicapped youngsters in this country of great wealth and compassionate people.

We recommend that the National Institute of Education set aside appropriate funds to conduct research and disseminate information to state and local education agencies regarding educational research, demonstration projects, and promising teaching practices for the educationally handicapped.

We also suggest the inclusion of language that sets forth effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

We further recommend that language be included that encourages non-profit organizations whose constituents possess skills and techniques of imparting information to initiate dissemination of educational activities as described above in conjunction with local and state education agencies and other public institutions.

We also suggest that 1978 be established as a target date by which each state must include all handicapped youth in an appropriate program that encompasses their need differences in terms of professionally trained personnel, equipment, materials, and other basic resources.

We recommend that language be included that sets forth effective procedures for acquiring, training, and the updating of teaching skills of teachers of handicapped youngsters. We recommend that meaningful teaching practices and promising projects be disseminated to teachers through seminars, workshops, demonstration projects, and other similar vehicles in cooperation with local and state education agencies, institutions of higher education, and other appropriate organizations. We further recommend that the "Teacher Corps" concept that had its beginning in the 60's to prepare teachers to serve in areas of extreme educational need be extended to prepare teachers to assist in fulfilling the unmet educational needs of the nation's eight million handicapped youngsters.

NEA has a long-standing resolution which precludes our endorsement of the use of public funds for non-public education purposes. We, therefore, recommend that language be included in the bill, that stipulates that federal legislation be in compliance with civil rights statutes, be consistent with the Constitutional provision respecting the establishment of religion, and provide for judicial review as to its Constitutionality.

We also recommend that the recipients of these funds be required to implement an affirmative action plan and file annual reports with the Commissioner and the Equal Employment Opportunity Commission.

We further suggest that language be included that guarantees procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children as well as providing for due process, hearing and examining all relevant records with respect to the above listing processes. We especially emphasize the inclusion of language insuring that testing and evaluation materials and procedures utilized for the purpose of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

We further suggest the inclusion of language that guarantees the access to a program that meets the basic needs of handicapped youth and that the state and local education agencies be held accountable for developing such a plan that delivers the education needed.

We hope that this Subcommittee will develop a good comprehensive bill that will begin to provide educational programs for the four million handicapped in school and extend these programs in scope for the approximately eight million handicapped individuals whose educational needs are basically unmet.

We thank the subcommittee for inviting the NEA to testify.

STATEMENT OF JAMES A. HARRIS, PRESIDENT, THE NATIONAL EDUCATION ASSOCIATION

Mr. HARRIS. Mr. Brademas and members of the subcommittee: I am James A. Harris, president of the National Education Association, which represents 1.7 million professional teachers, each of whom

comes into frequent, if not daily, contact with youth who have serious learning disabilities because of one or more emotional, physical, or mental handicaps.

We are extremely pleased that this subcommittee is again designing legislation to deal with an area that is replete with neglect and in some instances a total disregard for the basic needs of handicapped youth. There are some 7.8 million youth in this country with handicapping conditions, half of which are not being provided a program that meets their basic educational needs.

We urge the subcommittee to move as expeditiously as possible through the legislative process a comprehensive document that fulfills the basic unmet needs of all of the Nation's handicapped youngsters.

The handicapped youth of our affluent society should not be made to suffer the extreme pains of despair and educational neglect due to counterproductive political hangups.

In the event Congress does not enact new legislation within a reasonable amount of time, we then suggest that the "Randolph amendment," S. 1264, now pending before the Senate Subcommittee on Handicapped, which extends for 2 years the so-called Mathias amendment to the Education Amendment of 1974, Title VI-B, Education of the Handicapped Act, be approved.

Should Congress grant the requested 2-year extension of the Randolph amendment to the Mathias amendment with an authorization of \$680 million, we sincerely hope that the appropriations process does not lag too far behind in dealing with the educational needs of approximately 8 million handicapped youngsters in this country of great wealth and compassionate people.

We recommend that the National Institute of Education set aside appropriate funds to conduct research and disseminate information to State and local education agencies regarding educational research, demonstration projects, and promising teaching practices for the educationally handicapped.

We also suggest the inclusion of language that sets forth effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

We further recommend that language be included that encourages nonprofit organizations whose constituents possess skills and techniques of imparting information to initiate dissemination of educational activities as described above in conjunction with local and State education agencies and other public institutions.

We also suggest that 1978 be established as a target date by which each State must include all handicapped youth in an appropriate program that encompasses their need differences in terms of professionally trained personnel, equipment, materials, and other basic resources.

We recommend that language be included that sets forth effective procedures for acquiring, training, and the updating of teaching skills of teachers of handicapped youngsters. We recommend that meaningful teaching practices and promising projects be disseminated to teachers through seminars, workshops, demonstration projects,

and other similar vehicles in cooperation with local and State education agencies, institutions of higher education, and other appropriate organizations.

We further recommend that the Teacher Corps concept that had its beginning in the sixties to prepare teachers to serve in areas of extreme educational need be extended to prepare teachers to assist in fulfilling the unmet educational needs of the Nation's 8 million handicapped youngsters.

NEA has a long standing resolution which precludes our endorsement of the use of public funds for nonpublic education purposes. We, therefore, recommend that language be included in the bill that stipulates that Federal legislation be in compliance with civil rights statutes, be consistent with the constitutional provision respecting the establishment of religion, and provide for judicial review as to its constitutionality.

We also recommend that the recipients of these funds be required to implement an affirmative action plan and file annual reports with the Commissioner and the Equal Employment Opportunity Commission.

We further suggest that language be included that guarantees procedural safeguard in decisions regarding identification, evaluation, and educational placement of handicapped children as well as providing for due process, hearing and examining all relevant records with respect to the above listed processes.

We especially emphasize the inclusion of language insuring that testing and evaluation materials and procedures utilized for the purpose of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

We further suggest the inclusion of language that guarantees the access to a program that meets the basic needs of handicapped youth and that the State and local education agencies be held accountable for developing such a plan that delivers the education needed.

We hope that this subcommittee will develop a good comprehensive bill that will begin to provide educational programs for the 4 million handicapped in schools and extend these programs in scope for the approximate 8 million handicapped individuals whose educational needs are basically unmet.

We thank the subcommittee for inviting NEA to testify.

Mr. BRADEMAS. Thank you very much, Mr. Harris, for a most thoughtful statement. In particular I would want to commend you for your suggestion that 1978 be established as a target by which each State must include all handicapped youth in an appropriate program that encompasses their need differences in terms of professionally trained personnel, equipment, and other basic resources.

It seems clear to me that one of the reasons we are here is that the courts of the country, and a number of State legislatures have been moving toward requiring that handicapped children be regarded as coming within the constitutional assurance of equal opportunity for education even as nonhandicapped children, which leads me to a question.

You use the phrase "handicapped" in your statement. How broad a definition of handicapped have you in mind. What do you mean

when you say "handicapped children"? How broadly would you cast your net?

Mr. HARRIS. In that definition, I would want to include any youngster that had some type of physical or mental disorder or disability that put him in such a State that the regular offered programs left something to be desired as far as his basic needs were concerned.

It might be that the youngster is mentally disturbed, and needs some kind of help in that regard; or some of the more obvious physical defects that youngsters experience.

Mr. BRADEMAS. That is very helpful to my own understanding, because in your response you single out either physical or mental infirmities. I make this point because I suppose one could argue that there are other kinds of disabilities that could be described as handicapping in nature.

It is important for us to get as clear an idea as we can of the definition of "handicapped children" because from the definition flows money. I take it, therefore, to reiterate, you are stressing the physical and mental aspects of handicapped children?

Mr. HARRIS. Yes. I am of the opinion that the staff supplied you with some supplementary material. I will provide you with those materials. One of the documents lists the more common problems on the side, and includes a number of youngsters that are involved in those categories.

It includes speech impairment, the mentally retarded, emotionally disturbed, and other health impairments, hard of hearing, visually handicapped, deaf, blind and other multihandicapped.

It would be these patient categories that we have reference to. [Information referred to follows:]

ESTIMATED NUMBER OF HANDICAPPED CHILDREN SERVED AND UNSERVED, BY TYPE OF HANDICAP

	1974-75 ¹ served (projected)	1974-75 unserved	Total handicapped children served and unserved ²	Percent served	Percent unserved
Total age 0 to 19.....	3,947,000	3,939,000	7,886,000	50	50
Total age 6 to 19.....	3,687,000	3,062,000	6,699,000	55	45
Total age 0 to 5.....	260,000	927,000	1,187,000	22	78
Speech impaired.....	1,850,000	443,000	2,293,000	81	19
Mentally retarded.....	1,250,000	257,000	1,507,000	83	17
Learning disabilities.....	235,000	1,731,000	1,966,000	12	88
Emotionally disturbed.....	230,000	1,080,000	1,310,000	18	82
Crippled and other health impaired.....	235,000	93,000	328,000	72	28
Deaf.....	35,000	14,000	49,000	71	29
Hard of hearing.....	60,000	268,000	328,000	18	82
Visually handicapped.....	39,000	27,000	66,000	59	41
Deaf-blind and other multihandicapped.....	13,000	27,000	40,000	33	67

¹ Estimated total numbers of handicapped children served—obtained from SEA's fall and winter 1975. Information by type of handicap was not available and is projected from data provided by SEA's for school year 1972-73.

² Total number of handicapped children ages 0 to 19 provided on basis of estimates obtained from various sources, including national agencies and organizations, plus State and local directors of special education. According to these sources the incidence levels by types of handicap are as follows: speech impaired 3.5 percent, mentally retarded 2.3 percent, learning disabilities 3.0 percent, emotionally disturbed 2.0 percent, crippled and other health impaired 0.5 percent, deaf 0.075 percent, hard of hearing 0.5 percent, visually handicapped 0.1 percent, deaf-blind and other multihandicapped 0.08 percent. The total number of handicapped children in the above categories represents 12.035 percent of all school age children from 6 to 19 and 0.018 percent of all children age 0 to 5. The population figures to which the incidence rates were applied, were obtained from the Bureau of Census and reflect the population as of July 1, 1974.

Mr. BRADEMAS. I understand, and I will make another point on this. I am not coming down one way or the other, I am trying to

understand our focus of concern, because one could, I suppose, take the position that a child who did not speak English very well, and whose main tongue was another language is "handicapped," and in a common sense, one could make that point.

I take it, Mr. Harris, that you are suggesting that for purposes of legislation of this kind, our stress should be on physical and mental infirmities of the kind that you have just indicated. Is that correct?

Mr. HARRIS. Yes, that is correct.

Mr. BRADEMAs. Thank you very much.

Mr. Bell.

Mr. BELL. Mr. Harris, it is a pleasure to welcome you before the subcommittee. On page 2 of your statement, you said:

We also suggest that 1978 be established as a target date by which each State must include all handicapped youth in appropriate program that encompasses their need differences in terms of professionally trained personnel, equipment, materials, and other basic resources.

Can you tell the subcommittee exactly how this should be accomplished?

Mr. HARRIS. Well, No. 1, we are speaking to the timing in this paragraph, and our main point dealt with 1978 as the target date. I am sure that there could be a variety of programs that would involve some type of needs assessment to determine what specific State needs were. Some States are much further along in programs to the handicapped than others.

They would develop programs that would allow them to get at those basic needs. This suggests, of course, some kind of flexibility in the program that would allow them to make an assessment, and then an appropriate kind of response.

Mr. BELL. If the Federal Government cannot or will not provide the necessary funds, how can this goal be carried out?

Mr. HARRIS. I am of the opinion that the Federal Government is a key in this regard. So many tax sources have been worked about as far as they can go, and it is certainly my hope that there will be an appropriate Federal response in this regard.

Mr. BELL. What if the Federal Government doesn't, will the States do it?

Mr. HARRIS. I don't think the States have done it. I could underline some of the needs for the Federal Government to do it. Programs that I have experienced personally, and I have had a chance to observe, have been generally quite inadequate when left up to the local and State sources.

Mr. BELL. Mr. Harris, your statement establishes a fairly strong position regarding the Federal Government. But suppose that the Federal Government does not or can only provide a very small part of necessary funding.

Mr. HARRIS. I think that we could find a good many illustrations that would point out that if the Federal Government does not do it, it will not happen. I think that it would probably be reasonable to make that kind of assumption as far as some States are concerned.

The fact that the needs exist, and people are aware of the needs, it does not necessarily mean that it is going to happen today. The Federal Government, as we all know, has generally been most effective in those areas that have been overlooked, or where people have been unable to respond or have failed to respond for some reason.

I guess, if I had to make a flat statement as to what would happen if the Federal Government did not do it, I would say that some States would make a fairly reasonable effort in this regard, and that other States might do virtually nothing.

Mr. BELL. You know, Mr. Harris, that there is a real budget problem in this country. There is a question of how much we can do, and how far we can go. It is very vital that we make some contingencies in case the Federal Government does not do some of the things that you ask.

Mr. HARRIS. I can appreciate the fact that there is a budget problem.

Mr. BELL. I know that we should do all the things that you are talking about, but maybe we cannot.

Mr. HARRIS. I can appreciate the fact that we are in a budget situation that has been unparalleled in recent years, and it is complicated. Yet, I think that when we are dealing in terms of young people, they should have a special kind of consideration because they are at a time in their life when either their needs get met; or in many instances they spend the rest of their life with those needs unmet.

If we do the kinds of things that allow young people to get away from us as teachers at a crucial time in their life, no matter how much you put into a program in later years, you can only recover a certain portion of that.

It is not just a humanitarian thing in terms of meeting the needs of the young person. I think that as we think of our own needs as a country, and the communities that rely upon young people being able to produce at their full potential, it is to our economic advantage, not only on a short-term basis, as we keep young people in school and see that they get the proper training, but on the long-term basis when we want them to be producers, and we either have, or have not, provided them with the skills that make it possible for them to fulfill that role.

Mr. BELL. I might agree with you in all the things you are saying, but there still exists a cost problem. This is the question that I previously raised. For example, what would the proposals and suggestions mentioned in your statement cost?

Mr. HARRIS. There was some indication of funds in the testimony when we thought in terms of the Randolph amendment. We are talking about an authorization of \$680 million.

Mr. BELL. Would that amount meet all the needs you have discussed?

Mr. HARRIS. That would not meet all of the needs, but it certainly would as far as the extension of the program in terms of the kinds of things that are currently happening. But it is an expensive matter, and we know that. Yet, it is a very necessary one.

I would hope that the kind of effort that it takes to approach problems that just cannot wait would be exerted.

Mr. BELL. Am I to understand, Mr. Harris, that you are considering the \$680 million figure, and maybe giving up some of your other ideas; or would \$680 million cover everything?

Mr. HARRIS. I think that if we talk about the program as we envision it, we think that it could come somewhere close to meeting the needs of these youngsters, we are thinking in terms of \$3 billion.

Mr. BELL. We are now thinking in terms of \$3 billion. As a realistic and practical man, you know that such a goal is not going to be met under present circumstances.

Am I to understand that you feel that the figure should be \$680 million, in light of current circumstances, of our budget and other economic problems?

Mr. HARRIS. I see that as somewhat of a poor second.

Mr. BELL. A poor second?

Mr. HARRIS. It would extend the present program which has it in the kind of inequities that I described here, and only a fraction of the youngsters having their needs addressed.

Mr. BELL. If I understand you correctly, you think that the \$680 million would cover just a fraction of the youngsters?

Mr. HARRIS. Yes, that is true, I think that we would want to do better than that. As you have expressed, and I realize that it is not the day when we can do all of the things that we would like to do, when we consider our total list of things.

Yet, I would think that the type of thing that I would like to see happen is that education, and especially in this critical area, would get a higher priority than that which has been demonstrated in the past. That is sort of the intent of this testimony.

Mr. BELL. Mr. Harris, don't think that I am being hostile, because I am not. I am in sympathy with what you are trying to do, but I have to ask these questions.

Is this the NEA's top priority in education?

Mr. HARRIS. This is not our top priority.

Mr. BELL. What is your top priority?

Mr. HARRIS. Our top priority is to move to the position of having the Government provide a third of the local school dollars. Now we know that the Federal Government is right at about 7 percent. Now, we realize the fact that this may be an unrealistic figure in terms of right today, but it is the direction that we feel that we must move, if educational needs of the young people of this country are going to be met. Then we start dealing on the winning side, rather than having 23 percent of our youngsters failing to graduate from high school, and adding to the welfare rolls, and unemployment, all of those things that are really a drain on the economy.

The local budgets are doing about as well as they can be expected to do in this day.

Mr. BELL. Thank you, Mr. Chairman.

Mr. BRADEN. Mr. Lehman?

Mr. LEHMAN. I get a lot of the flack from the public school system even now with regard to handicapped children, because of the 6 years that I served on the Dade County School Board.

One of the problems I get is the appearance of these borderline cases of so-called handicapped. Now, of course, under the new decisions, the Dade County School Board has to provide funding for those handicapped children that do not, or cannot fit into the handicapped classes of the school system.

There is a constant battle between what the parents say is a satisfactory public school place for their child, and what the school system says is adequate for the child. I am caught in the crossfire between what the parents say is good enough, and what the school system evaluates is good enough.

Of course, the parent who wants his child in an educational environment, separate from the public schools, which would cost the school system \$3,000 to \$5,000 a year. This has two thrusts. One, it takes the child out of the public school system, when the organization has its impact; secondly, it really—

I just wonder if that is a heavy burden on our school system. Have you got a program, or any advice, or any help in this bill that would kind of help with these kinds of expenses.

Do you know what I am trying to say? I know there is an area of autistic kids that don't seem to fit in anything in the public school program that I have seen. Then, we also get these kids with what the parents call "learning difficulties," and they don't want to call them mentally retarded, and all.

I just wonder if you had in mind anything that we could put in this bill that would take care of this problem?

Mr. HARRIS. First let me say that we would certainly want to argue for them being included in the regular school program, because they cannot go through life separate, and isolated, and segregated.

School training, school experience such as that never really equips them for functioning in a society where they are not just catered to in that kind of regard. In addition to that, I can understand that many parents in desperation have had to put their children away from a program that was grossly inadequate to try to do the best that they could for their youngster. Many times that meant putting them in a private school.

We would strongly encourage building the public school programs, so that the youngster could get adequate consideration in the regular schools.

Mr. LEHMAN. I think that you are going to have to really—if you would yield back to me. I find that the average special education administrators, even in the big-city school systems, have come down the line from inadequate sensitivity training to the needs of the parents, or the needs of the child.

Even in a school system the size of Dade County with a quarter of a million people, they have a very difficult time, not necessarily with the physically handicapped, but the marginal emotionally and physically handicapped, to really do the kind of job that is required to be done.

What I find out, and this is over and over again. This is not an isolated case. I think that the parents are very concerned about the stigma of handicap program in the public schools versus the kind of elitism, almost, in the special schools outside of the system. Do you know what I am trying to say?

Mr. HARRIS. I know what you mean.

Mr. LEHMAN. I know that these kids go to these classes, if they go to a regular school system, and I don't know if you have ever heard the term "occie," but they are called "occies" by the regular schools and elementary schools. The special education kids are "occies," which means that this is a term that comes from occupational therapy.

These kids get some pretty rough treatment, and they don't need that, you know. I wonder if the basic problem now is going to be the cost of how to prevent the ballooning costs of the school systems pick-

ing up the costs, when the parents say that they cannot get this kind of training even in the Dade County school system on how to deal with these marginal problems of the kids that become stigmatized by being part of the regular school programs, which is a pretty tough road to hack.

I find out that parents over and over again would rather see their kids come home with F's in their regular classes than to be passing in the special classes. They do everything in the world, in many cases, to keep these kids out of these handicapped classes on the mental level.

They just don't want their kids lumped with the brain damaged kids. They don't want them lumped with the kinds that are too often grouped together with the kinds of physical and mental problems. This is a touchy area, and believe me it is a hot political issue, when some of these parents get to dealing with you on this level.

Mr. HARRIS. I guess that I probably could top your story on some of the names that kids are called in school, but I don't think that we provide—

Mr. LEHMAN. "Occie" is a euphemism.

Mr. HARRIS. I don't think that we provide special schools for kids simply because they are called certain names. I think that it does point to the demonstration of the fact that certain teachers and administrators might not be as sensitive to the problem as they ought to be.

This is one of the things that are pointed out here. There needs to be special training for, and special seminars for, and so forth, people who are going to be involved with these youngsters, so that they can deal with them effectively.

There are certain extreme kinds of cases that the school would not be able to handle, the regular school programs.

Mr. LEHMAN. I don't want to pursue it, but these are not the extreme cases. I think that the problem is there in the borderline mental and emotional cases, and there is no reason why a school system as large as 250,000 kids in Dade County could not accommodate without going to private schools any type of these problems, if they had the right kind of funding, and the right kind of program.

I think that this bill should lend itself to this kind of an effort.

Mr. HARRIS. I think that we are 100 percent in agreement on that, and I would probably even go further than the borderline cases. I think that when a child's disabilities can be dealt with effectively, and he can still be a part of the overall program, that he is getting two benefits. He is not going to, some day after his schooling, face the shock of having to cope in the world with people without these particular disabilities that he has experienced.

So, I think that we are saying exactly the same thing, and I think that it is somehow for the teachers and the staff involved that training is needed.

Mr. LEHMAN. One other question. What did you learn about handicap education during your trip to China? Do you think that it would be good for us to go over there and study that?

Mr. HARRIS. I think that it would be good for you to go over there, and study that.

Mr. LEHMAN. What other kinds of systems are doing in this respect? Do they really go back and try to do anything? Did you run into any situations like this while you were there?

Mr. HARRIS. I cannot recall a specific program designed just for the handicapped youngsters. I wish I could address myself to that.

Mr. LEHMAN. Maybe we both ought to go over there and look at that.

Mr. BRADEMAS. Mr. Peyser.

Mr. PEYSER. Thank you, Mr. Chairman.

Mr. Harris, I am glad to have you here with us this morning, and to have your testimony. I am only going to ask you one question, because many things have already been covered and time rapidly runs on this morning.

You say on page 2 of your testimony:

We are also suggesting the inclusion of language that sets forth effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children . . .

Now, the conclusion that I drew from that, and I concur with this from my own experience, is that the information on programs that exist right now does not effectively reach the teachers and administrators.

Would you mind elaborating a little bit on this, and what your suggestions would be?

Mr. HARRIS. Yes, I find that as many times as I have a chance to visit various schools systems in various places, and I do this fairly regularly, I find things happening in one area that seem to be fairly well along the line, and other places almost like they have never heard of what is taking place in these areas.

I think that just the sharing of information in some instances would be a good bit of benefit. If there were some type of organized system that would allow that to happen, I think that it would be a fringe benefit.

Mr. PEYSER. Under the present legislation there are distinct programs for the handicapped that are federally funded, or have Federal money involved. Are you suggesting that we may very well not be getting our money's worth out of the total program because the lack of information that exists in many of the areas that could be availing themselves of additional help for understanding what the program is?

Mr. HARRIS. I suppose that this is a fair statement. Just as we know, the normal channels for communication handle the real problems, and that information gets disseminated readily. Yet on almost any kind of problem that has arisen and has received widespread attention, I have encountered many instances of that same type of thing being dealt with without a problem, very effectively, and people are quite happy and feeling satisfied that they were moving in the right direction.

Yet, that is really not news, as we know, so the channel does not take care of it. It would seem to me that if we cause that to happen, we would benefit from it, and probably get a little more mileage out of the funds than we do.

Mr. PEYSER. As time goes on, in looking at this whole program, we definitely should try to concentrate on how effective we are in getting the message out of what we have to offer, because I think that there are school districts that do minimal where they could, even within

the framework of the present programs; do a great deal more, if they had information of what the whole thing is about.

I think that this is a key part, and I very much approve of what you are saying here. Also, perhaps with the Chairman's help, we can see just how far we are going in getting this information out.

Mr. HARRIS. I would add to that that I also encounter a lot of frustrated people who are kind of ashamed of what they are doing. They know how to do better, but they have not been able to find the means to do it.

I guess that I find that probably as much or more than any situation. I find individual classroom teachers that will just sigh in desperation, and say: "Look at that." They know they are just making a feeble effort at something.

I can recall in many instances in my teaching for 27 years that there were all kinds of times when I needed help with problems, and I knew I needed help and asked for it, and the help was not available.

So, I think that if we were to take the attitude that the distribution of how to do it type of information was a substitute for providing the means for an effective program would not be as effective as the two kinds of goals.

Mr. FEYSER. Thank you, Mr. Chairman.

Mr. BRADEMAS. Mr. Cornell?

Mr. CORNELL. I would like to follow up on the questions that Mr. Bell asked. On the first page of your statement, you mention that there are some 7.8 million youth in this country with handicapping conditions, and you say that half of them are not being provided a program that meets their basic educational needs.

Then later on, as Mr. Bell pointed out, you mentioned that apparently your organization would be satisfied with the extension of the Randolph amendment, which would provide \$680 million.

Now, am I to conclude, therefore, if that were done, still only half of the handicapped would be reached?

Mr. HARRIS. That is not an accurate concept. We felt this ought to happen if nothing else happened. Certainly that is a far cry from a realistic approach for dealing with this problem.

Mr. CORNELL. I noted also that you felt that the local governments and State governments were probably doing as much as they could from a financial point of view in subsidizing, as it were the education of the handicapped, and more would have to come from the Federal Government.

Obviously, you would not think that \$85 for a handicapped person would be anywhere near adequate to reach the suggestion that by 1978 each State must include all handicapped children in their programs, because according to my figures that is what you are getting from the Federal Government, \$85 per student.

Mr. HARRIS. I was not suggesting the extension of the amendment's appropriation as a realistic approach for solving the problem of meeting the needs for these young people, not at all.

Mr. CORNELL. You did mention a figure, I believe, of \$3 billion. Is that right?

Mr. HARRIS. That is right.

Mr. CORNELL. You felt \$3 billion would be necessary from the Federal Government in order to achieve this goal that all handicapped children be incorporated in the school programs?

Mr. HARRIS. Yes.

Mr. CORNELL. Thank you very much.

Mr. BRADENAS. Thank you again, Mr. Harris. We appreciate your coming here, and your thoughtful testimony.

Our next witness is Frederick J. Weintraub, assistant executive director of the Council for Exceptional Children.

Mr. Weintraub, we are glad to have you with us. To the extent, Mr. Weintraub, that you can focus on the principal recommendations, and principal points of your analysis that would be very helpful, and your entire statement will be included in the record.

[Statement and insert follow:]

PREPARED STATEMENT OF FREDERICK J. WEINTRAUB, ASSISTANT EXECUTIVE DIRECTOR FOR GOVERNMENTAL RELATIONS, THE COUNCIL FOR EXCEPTIONAL CHILDREN, RESTON, VA.

Mr. Chairman, Members of the Committee: We are most grateful for the opportunity to appear before you today to offer our comments with respect to the legislation before the Committee which proposes significant amendments to the Education of the Handicapped Act. My name is Frederick J. Weintraub and I hold the position of Assistant Executive Director for Governmental Relations at The Council for Exceptional Children.

As you well know, Mr. Chairman, The Council for Exceptional Children is a national organization with a membership of approximately 65,000 professionals in the field of special education.

As you also well know, Mr. Chairman, we have been before this distinguished panel on prior occasions in recent years to offer our comments and recommendations relative to this legislation. Therefore, we will today dispense with a further reiteration of the well-documented need for this measure, and instead focus our remarks on what we consider to be the major legislative issues remaining as the Congress moves towards what we trust will be approval of the amendments.

We have viewed with pleasure the significant advances made in the 93rd Congress toward the achievement of two primary objectives on behalf of handicapped children, namely:

- An appropriate public education for all of America's handicapped children; and
- A guarantee of the essential rights of handicapped children and their parents within the total educational environment.

More specifically, we now have firmly in place, primarily under the aegis of Public Law 93-380, the Education Amendments of 1974, the following:

- A basic aid to the states program for the education of handicapped children, which has been significantly expanded in authority and appropriations by the 93rd Congress;

- A Bureau of Education for the Handicapped, securely placed at the top of the administrative ladder for maximum visibility and maximum advocacy on behalf of exceptional children;

- A mandate to the states to prepare and submit to the Commissioner a comprehensive blueprint for the education of all handicapped children in each state, including a detailed timetable for implementation of such a blueprint;

- A priority in the use of EHA, Title VI-B funds, for children not now receiving an education program;

- A plan from the states for the provision of due process guarantees to all children served and their parents;

- A plan from the states showing how all handicapped children will be educated in the least restrictive environment;

- A plan from the states showing how they will prohibit the classification of children in a racially or culturally discriminatory manner; and

- A deinstitutionalization incentive in educational programming for children counted and served under the special entitlement of Title I, ESEA, for handicapped children in state-supported facilities.

But despite the tremendous strides realized through the refinement of both national and state policy toward the liquidation of one of this Nation's last islands of extreme neglect, we find the Bureau of Education for the Handicapped reporting in 1975 to the Congress that only 55 percent of our school-age handicapped

children and a meager 22 percent of preschool-aged handicapped children are receiving the public education programs which they so desperately require if they are to take their rightful place alongside their nonhandicapped peers in adulthood.

Moreover, we observe one Member of the Congress stating flatly in Chamber remarks of March 20 of this year: "In all, 3.9 million children are standing in the waiting lines for the fundamental equal educational opportunity on which our Nation is based." The Council for Exceptional Children believes that it is time for the Congress to take one more step to get that school-house door open, and keep it open, once and for all.

Mr. Chairman, the legislation pending before you would authorize a further, even more substantial federal impact toward the guarantee of an appropriate public education for America's 7.8 million handicapped children. We most heartily endorse both the general legislative objectives and the specific features of this significant legislative vehicle. Furthermore, we feel that this legislation, having undergone continuing refinement since the beginning of this decade, having been analyzed and debated in innumerable public forums over the years, having gathered to itself the endorsement of a wide array of organizations and hundreds of thousands of parents and other concerned citizens—should now be moved and moved immediately. Quite bluntly, every day of continued delay may mean that one more exceptional child may not be able to turn that corner to freedom and fulfillment.

Mr. Chairman, we would like to take this opportunity to comment on three paramount features which we feel most strongly must be contained in these important amendments of the Education of the Handicapped Act.

EDUCATION FOR ALL

Federal legislation for a number of years has promoted the achievement of a "full services" goal, namely, making available to all of our handicapped children an appropriate educational opportunity at public expense. But no legislation as yet has moved to provide a precise guarantee for children of school age, a basic floor of opportunity that would place all of the school districts of the Nation in compliance with the Constitutional right of equal protection with respect to handicapped children and youth.

We suggest that the case-by-case, "hit and miss" approach to the guarantee of children's rights within the total educational environment must be terminated, and we further suggest that such a termination by legislative design constitutes that next logical and appropriate direction at the federal level.

We therefore recommend the establishment of a permanent compliance mechanism which will ensure compliance in every state with those guarantees for which assurances are already sought in federal legislation:

That every handicapped child of school age has in fact available to him/her a free, public education;

That every handicapped child in a public education program is in fact receiving a free education, at no additional cost to parents or guardians;

That every handicapped child is in fact being educated in the least restrictive environment;

That every handicapped child and his/her parents, guardian, or surrogate are afforded all of the essential due process guarantees in all matters of identification, evaluation, placement, and re-evaluation; and

That every handicapped child is protected against testing materials and procedures used for classification and placement being selected and administered in such manner as to be racially or culturally discriminatory.

What do we see as the essential ingredients of such a compliance mechanism?

1. A compliance board based at the state level, composed of knowledgeable and concerned citizens, mandated to monitor educational systems to insure protection of rights and mandated to receive and make decisions upon complaints of rights noncompliance.

2. Responsibility vested in the U.S. Commissioner of Education to review any report from a given state broad of substantial noncompliance which has not been remedied within a reasonable time period.

3. Responsibility further invested in the U.S. Commissioner to cut off Federal, state, or local funds for education until such time as noncompliance has been remedied, during the process of which the Commissioner shall himself afford appropriate due process for the alleged offending school district or state, or both.

Mr. Chairman, such an approach would have advantages for all:

1. Every school district would, within a reasonable period of time after establishment of these boards, have a clear picture of exactly what they should or should not do relative to handicapped children.

2. Such a board could bring valuable expertise and advocacy to the cause of children's rights within the State itself.

3. Such boards would seek to balance authority between the state and its traditional responsibility for education and the national government, with its responsibility to guarantee Constitutional rights.

Mr. Chairman, the states are now in the process of developing their new state plan requirements as set forth in P.L. 93-380, the Education Amendments of 1974. The Amendments now before us, if enacted, would not alter that process, but rather place the capstone on the process of achieving the "full service to all" objective. It might even be reasonable to assume the need for a "phase-in" to any new formula for distribution of funds under the basic grant program. If one puts all of these ingredients together, it might be most appropriate to set a final target date at the beginning of fiscal 1978 in which at a minimum every handicapped child of school age is guaranteed an education, State plans are to be implemented, and a compliance board on behalf of the rights of handicapped children is in existence. The states would have sufficient time to tool up, and any excuse for noncompliance in enforcement of the basic rights of children could be characterized as wholly suspect.

Parenthetically, Mr. Chairman, it is worth noting that the first comprehensive legislation on behalf of the education of handicapped children was enacted in 1967; it would indeed be a fitting capstone to a decade of effort and concern on the part of the Congress to enforce right to an education before 1978.

Mr. Chairman, we are prepared to submit to this panel legislative language to achieve the objective just discussed.

SEA RESPONSIBILITIES

One of those requirements most urgently needed, and under serious consideration as part of the amendments now before the Committee, is the stipulation that the state education agency shall be the sole agency for carrying out provisions of this part and shall supervise all education programs for handicapped children within the given state.

Regardless of whether another state agency within the state is in fact administering an educational program for handicapped children, it is both appropriate and necessary that the agency designated as "educational" should have primary responsibility for at least the following reasons:

- To centralize accountability;
- To encourage the best utilization of educational resources;
- To guarantee complete and thoughtful implementation of the comprehensive state plan for the education of all children within the state;
- To ensure day-by-day coordination of efforts among involved agencies; and
- To end the practice of "bumping" children from agency to agency with no one taking charge of the child's educational well-being.

INDIVIDUALIZED PROGRAMS

The movement toward the individualization of instruction, involving the participation of the child and the parent, as well as all relevant educational professionals, is a trend gaining ever wider acceptance in numerous quarters throughout the Nation. In point of fact, this Congress and this Committee have already expressed their attention to the need for increased individualization in at least two public laws: P.L. 93-112, the Rehabilitation Act Amendments of 1973, and P.L. 93-380, the Education Amendments of 1974.

As you well know, we at the Council have long been interested in the so-called "individualized written plan" for handicapped children for two fundamental reasons:

Each child requires an educational blueprint custom-tailored to achieve his or her maximum potential; and

All principles in the child's educational environment, including the child, should have the opportunity for input in the development of the plan.

We feel that these amendments must contain such mandate of an individualized plan including at least the following ingredients:

1. Such plan must be developed in consultation with the teacher, the parents or guardian of the child, and, where appropriate, the child himself.

2. Such plan must include a statement of the child's present levels of educational performance.

3. Such plan must contain statements of the short-term instructional objectives to be achieved.

4. Such plan must contain a statement of the specific educational services to be provided, and the extent of integration into the regular classroom.

5. Such plan must show the projected date for the initiation and anticipated duration of services.

6. Such plan must include in every way possible objective criteria and evaluation procedures and schedules for determining whether instructional objectives are being achieved.

7. Such plan must be reviewed at last annually in consultation with parents or guardian, and revised where appropriate.

Mr. Chairman, few would take issue with the proposition that one of the most difficult tasks for the Congress of the United States is the development of equitable and effective formulae for the distribution of Federal monies to a Nation 213 million citizens, 50-plus divergent States and Territories, and thousands of unique localities. The extensive debate which has accompanied the search for the "right" formula in the legislation before you is perhaps the most current witness to that proposition.

It is well known in all involved quarters that The Council for Exceptional Children has long supported the so-called "excess cost" approach in the distribution of funds at the federal level for special education and related services. We fully understand that such an approach is controversial, that there are genuinely problematical factors in the implementation of such a funding mechanism. While we still believe that "excess cost" offers as sound a formula as any other being considered, we maintain a completely open mind on the question of an alternative formula if such alternative is deemed more satisfactory by the leadership of this Committee.

Parenthetically, we have also been quite willing to support the so-called "Mathias" (after Sen. Charles McC. Mathias, R.-Md.) formula as an intermediate funding mechanism pending final Congressional disposition of the entire formula question. It is our conviction that the characteristics of any formula are interconnected with at least a "ball park estimate" of how much money the Congress has in mind in annual authorizations; and, consequently, both questions must be dealt with concurrently.

But the Council has an even more fundamental conviction, Mr. Chairman, namely, that the guarantees of an appropriate public education for all handicapped children contained in this legislation are far more important than the design of any formula contained in the same legislation. Correspondingly, the debate over the best formula should not be permitted to hold the larger mission of this legislation in virtual hostage.

Therefore, we conclude our remarks today by calling upon the leadership of this Committee, which has the expertise second to none and the political sensitivity second to none, to take personal charge of this question, and bring a debate which has been painfully overextended to an early conclusion.

Mr. Chairman, we again thank you for the opportunity given the Council to appear today on behalf of handicapped children. In closing, may we simply reiterate that we stand prepared to make the full resources of The Council for Exceptional Children available to this Committee as it fulfills its legislative charge on this important issue.

STATEMENT OF FREDERICK J. WEINTRAUB, ASSISTANT EXECUTIVE DIRECTOR, GOVERNMENTAL RELATIONS, THE COUNCIL FOR EXCEPTIONAL CHILDREN

Mr. WEINTRAUB. Thank you, Mr. Chairman.

Basically, Mr. Chairman, if we were to speak adequately about the total needs of handicapped children, we would be here for days. This committee has over the years documented more than adequately the needs of these children around the country.

Our hope is today that we can talk about the substance of the legislation that is needed, and the committee can complete its hearings

and take action on the things that handicapped children most greatly need at this point in time.

I think that it is important to take a look at what the committee accomplished last year under Public Law 93-380, and in the perspective of the total legislation that was before the committee last year, H.R. 70.

The committee extended the authority or expanded the authority, the fiscal authority under Public Law 93-380. The committee through its actions established securely the Bureau of Education for the Handicapped.

Action of the Congress also created the mandate to the States to prepare and submit to the Commissioner a comprehensive plan for the education of all handicapped children, including a detailed time table for its implementation.

A priority was established for the use of Federal funds for children not now receiving an education. It is important to remember that we have approximately 1 million handicapped children who are out of school, who are sitting at home, or who are sitting in the back wards of institutions, who are sitting in varying facilities and programs, who are not receiving anything that meets the wildest imagination of a free, public education.

Public Law 93-380 required that planned procedures be available for due process, to assure parents and children their rights in placement, and decisions about their lives. This requires that the children be placed in less restrictive environments so that the children not be shuttled off to special schools and institutions, when that is not needed.

The law also required the prohibition of racial or cultural discrimination, testing and evaluation, and also the provision, under title I, to encourage the institutionalization and movement of children from institutions back to public school programs.

So, all of this was accomplished last year, and much progress is being made by the States in trying to live up to the requirements set out in the law. However, we are before you today to, in a sense, call upon you to put the capstone on what you have worked during the past decade to achieve. That is the achievement of the full services goal, making available to all our handicapped children an appropriate education opportunity at public expense.

Therefore, we would endorse the notion subscribed by NEA, and proposed by others, which is that there be a target date of 1978 in which we finally end exclusion from a free public education.

We propose a compliance mechanism that would require the following things:

That every handicapped child of school age has available to him or her a free public education;

That every handicapped child in a public education program is, in fact, receiving a free education at no additional expense to guardians or parents;

That every handicapped child is, in fact, being educated in the least restrictive environment;

That every handicapped child and his or her parents, guardian or surrogate are afforded all of the essential due process guarantees in all matters of identification, evaluation, placement and reevaluation; and

That every handicapped child is protected against testing materials and procedures used for classification and placement being selected and administered in such a manner as to be racially or culturally discriminatory.

What do we feel are the essential ingredients of such a compliance mechanism?

We propose a compliance board based at the State level, composed of knowledgeable and concerned citizens, mandated to monitor educational systems to insure protection of rights and mandated to receive and make decisions upon complaints of rights noncompliance.

That the responsibility be vested in the U.S. Commissioner of Education to review any reports from a given State board of substantial noncompliance which has not been remedied within a reasonable period of time.

That responsibility further invested in the U.S. Commissioner to cut off Federal, State or local funds for education until such time as noncompliance has been remedied.

We think in many ways that this would be a great advantage to the school districts around the country. First of all, every school district would have a clear picture as to what it is that they are responsible for achieving.

Mr. Chairman, we have, and I will submit for the record a current summary of the litigation going on across the country. There are 40 suits now pending. Close to a dozen suits have been resolved.

We are forced to undertake case by case litigation in order to achieve the rights of handicapped children, and it is from district to district and from State to State. School districts are left in the jeopardy of one court ruling one way, and one order coming out one way, and one order coming out another way.

Here we would have a clear Federal standard to comply with and this would reduce, we believe, the vulnerability of school districts to this case-by-case approach.

Such a board could bring valuable expertise and advocacy to the cause of children's right within the State itself. Such boards would seek to balance authority between the State and its traditional responsibility for education and the Federal Government's responsibility to guarantee constitutional rights of its citizens.

One other item that we think is crucial in any legislation, Mr. Chairman, that is the responsibility of the State education agency. As we have testified on numerous occasions before this subcommittee, handicapped children are often caught in the bureaucracy of a variety of State agencies, all claiming "it is not my job, man!"

Those handicapped children end up sitting at home, end up sitting without an education because one agency claims that the other is responsible, and the other agency claims that another is responsible.

The only way we can assure that handicapped children are, in fact, provided the education to which they are constitutionally entitled is to declare that the State education agency, or the education system within the State is the sole agency responsible for assuring that every handicapped child receives the education he or she requires.

We certainly understand that the agency may wish to contract or utilize other agencies in carrying out that responsibility. However, we believe that a sole agency must be designated.

Legislation before the Congress dealing with educational handicapped has proposed a notion of individualized programs, or individualized plans. We have supported that notion, and we were delighted to see the notion or the idea of individualized contained within the rehabilitation amendments of 1973.

We would call for their inclusion within any legislation reported out by this committee. We would suggest, however, that these plans be considered as an informal mechanism, as a way of looking at children, rather than as a formal contract.

So, we would suggest that the plans be developed in consultation with the teachers, the parents, or guardian of the child, and where appropriate the child himself. I will not go into the other essential ingredients of the plans, which we have gone into in our statement.

One last comment, Mr. Chairman, and this concerns formula. If you would take issue that one of the propositions, or one of the most difficult tasks for the Congress or any legislative body is the development of equitable and effective formula for the distribution of moneys. The extensive debates which have accompanied the search for the right formula in the legislation before you are perhaps the best witness to the general problem.

It has been well known in all quarters that the Council for Exceptional Children has long supported the so-called excess cost approach, which is contained in H.R. 70. We fully understand that such an approach is controversial, and that there are genuine problematical factors in the implementation of such a funding mechanism.

While we still believe that excess costs offers a sounder formula than any other being considered, we maintain a completely open mind on the question of an alternative formula, if such an alternative formula is deemed necessary by the leadership of this committee.

Parenthetically, we are also quite willing to support the so-called Mathias formula as an intermediate funding mechanism. It is our conviction that the characteristics of any formula are interconnected with at least a ballpark estimate of how much money the Congress has in mind in annual authorizations. Consequently, both decisions must be dealt with concurrently.

The council has an even more fundamental conviction, namely that the guarantees of an appropriate public education for all handicapped children contained in H.R. 70 are far more important than the design of any formula, contained in the same legislation.

Correspondingly, the debate over the best formula should not be permitted to hold the larger mission of this legislation in virtual hostage.

Therefore, we conclude our remarks by calling upon the leadership of this committee, which has the expertise second to none, and the political sensitivity second to none, to take personal charge of this question, and to bring a debate that has been painfully overextended to an early conclusion.

What we are talking about, Mr. Chairman, is whether the Federal Government will enforce the constitutional rights of handicapped children, and say that by 1978 this debate that has raged over how many kids are getting an education, or are not being educated, will end. That the Federal Government will enforce that.

How much money it is going to take to do that, we appreciate. We appreciate the problem of a formula. However, the money is not the primary issue. It is an assistance to doing the job. The first thing is to get the commitment to assure that our handicapped children get the education they need.

Thank you very much.

Mr. BRADENAS. Thank you very much, Mr. Weintraub, for a characteristically incisive, thoughtful, and illuminating statement. Let me put several questions.

First of all, let us go to the same question that I asked Mr. Harris. How do you define "handicapped," what is the universe with which we deal?

Before finishing my question, I would simply call to your attention that in the language of the Education of the Handicapped Act, as you are aware, and I quote:

As used in this Title—this is section 602 of the Act—the term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled or other health impaired children, who by reason thereof, require special education and related services.

Now, I have two problems. One is. A couple of those phrases are fairly open-ended, as it were. It would seem to me that emotionally disturbed, and the phrase "other health impaired children," that we have both a moral problem, and a fiscal problem as well as an educational problem. What is the universe?

What do you think that we should mean when we say "handicapped" for the purposes of providing Federal tax dollars to support their education?

Mr. WEINTRAUB. Mr. Chairman, we would concur and support the retaining of the existing definition as you have read it. The definition in the legislative history is the definition that has gone back, I believe, since 1963, other than the more recent inclusion of the terminology "learning disability," which has been added.

In addition to that definition, our Federal Government, and the history of the Government on terms like "emotionally disturbed," we have long talked about seriously emotionally disturbed children.

There are Federal regulations and guidelines which lay out the parameters of what the term "seriously emotionally disturbed" means.

The term "health impaired" has been a problem, for example, with Head Start. However, in the area of education, the regulations have been much stricter, and now Head Start is more concisely complying with the Federal definition.

So, my feeling, Mr. Chairman, is that I don't think that it is an open-ended problem. I would think that if the committee is concerned about that, rather than trying to formulate new definitions and throwing some children out, I think that it might be reasonable for the committee to put a percentage ceiling, a percentage of children to participate.

We know that generally studies, while having discrepancies of a minor percentage point within them, the studies tell us that between 10 and 12 percent of the children of the country fall under that category.

If the committee is concerned, and comes up with a formula based upon numbers of children that might be an escalating factor in terms of declaring more children to be handicapped than I think/putting a percentage ceiling. That would be an effective way of controlling the expenditures.

Mr. BRADEMAS. You have touched on a problem that arises in my mind. If you allow for a definition that is not all that strict, then that opens the door to abuses among the several States, if you are supplying Federal money for the education of handicapped children.

I think I am correct in saying that the Mathias amendment serves as a mechanism for providing Federal moneys for the education of handicapped children without that amendment being linked to any precise effect, to any effort precisely to define handicapped children. Is that not correct?

Mr. WEINTRAUB. In terms of the formula, yes.

Mr. BRADEMAS. What about putting that question to one side for the moment, and I want to come back to it. What about the question of priority among the handicapped, assuming that we could reach agreement on definitions of the categories of handicapped?

Do you think that we should insist on priority in respect of one category over another, or not?

Mr. WEINTRAUB. No. However, I think there is a base for priority. In fact, Public Law 93-380 began to deal with this. It seems to me very clearly that the first priority ought to be those 1 million children that are sitting at home, or who are without any free public education. That is, in fact, what Public Law 93-380 requires.

The second priority ought to be children who are in school, but who are not receiving any of the special services that they require.

Mr. BRADEMAS. These would be the most severely handicapped I assume?

Mr. WEINTRAUB. I think that the first priority of the children who are out of school will tend to be the more severely handicapped. They will be the multiple handicapped, the severely retarded, the very severely emotionally disturbed, the autistic children that Mr. Lehman is concerned about. That will constitute the largest bulk of those children, who are out of the education program.

The second group will be children who are in school, who have handicapping conditions, but where attention is being given to that. This will constitute your more mildly emotionally disturbed children, your learning disabled children, the hard of hearing children, and so forth.

The third group is the children who are receiving some form of special services, but not adequate in terms of meeting the standards of appropriateness.

Our feeling would be that it would be very reasonable to pursue a set of priorities along that line, rather than defining whether a retarded child should go to school before an emotionally disturbed child. That is like saying that a certain group should vote before another group should vote. I don't think that it would be an appropriate distinction.

Mr. BRADEMAS. Two other quick questions. Do you know, and this is a followup on our earlier colloquy, in respect to the implementation of the Mathias amendment, if we have yet to develop adequate in-

formation to see the pattern among the several States in their spending on what the States decide are handicapped children in those States?

Mr. WEINTRAUB. I think that one needs to make a separation. Historically, the Congress has attempted through formula to achieve the behavioral change that they desired in States and communities.

If one looks at the total construct of the Education of the Handicapped Act, the rights guarantees, the State plans provision, the Federal guidelines on definition, and so forth, what has been achieved is through substantive law.

The structuring of the program is the structuring of the behaviors to be achieved. The appropriation through the formula is simply a mechanism for allocating the money. So, if I were to look at the Mathias formula simply as a formula, one would say that it opens the door to anything that anybody wants to do.

However, with the State plan requirements, with the additional requirements that the Congress put into law, what we are finding is that States are, in fact, trying to meet the compliance required in the statute.

I don't think that we will see massive abuses of the funds, because of the nondefined formula.

I think that it is a question of saying what is the substance of the bill, and how does the formula relate. If the substance is tight, then perhaps the formula could be looser.

Mr. BRADENAS. Let me conclude my questions with one other, which I will preface for the benefit of the new members of the subcommittee, because I am just verbalizing the problem that I have encountered, and, Mr. Weintraub, you will recall that we encountered in dealing with this.

Senator Williams of New Jersey and I put in a bill that we called the "Excess Cost bill," the theory of it being that the Federal Government would provide—grants to the States to reimburse local school systems for up to three-fourths of the excess costs involved in educating handicapped children over the cost of educating nonhandicapped children. That is to say that we did not intend to provide 100 percent of the cost of educating handicapped children.

The problem that we ran into, of course, was defining the cost of educating handicapped children. For one thing, there is the problem of diversity of kinds of handicaps. We just had a listing of them here. The cost is different, I suppose, for educating one child with one kind of handicap from educating a child with a different kind of a handicap.

That left us in a dilemma, that is a knowledge dilemma. That is why I get so outraged, because the education groups don't help us. As President Johnson said: "My problem is not doing what is right, it is knowing what is right."

I just relate this by way of letting my colleagues know about the problems that we encountered last year, which are still before us.

As I recall, Mr. Weintraub, the one area, the one witness, the one spokesman who gave us some hope in trying to cope with that problem was from Massachusetts, where they put together some kind of a model law.

Could you comment on that, and then I want to yield to members of the subcommittee.

Mr. WEINTRAUB. The State of Massachusetts has passed a bill, which is known as Public Law 66, which was perhaps the first very comprehensive special education law that took the principles that were coming forth in the court cases, and putting it all together in terms of the State's statutes.

In addition, the State has done a masterful job of educating people around the State, educating communities. We have yet to see, since it is only starting into its second year of operation now, the cost data out of the State, to know how adequately they have been able to give us the kind of information that you were suggesting is lacking.

We have had some experiences in Iowa, and in other States. I guess, Mr. Chairman, I am not sure that I am totally answering your question. I would be glad to provide more details, and get more specific examples out of Massachusetts and submit them to the subcommittee.

[Material referred to not submitted.]

However, I am not sure I would agree, Mr. Chairman, that the question is lack of knowledge. I think that the knowledge is there to set up an excess cost system. What we have is an accounting problem.

There are 20,000 school districts in the United States, and there is no standard accounting system in those 20,000 school districts. We have 50 State governments, and there is no standard accounting system in education between those 50 State governments.

The issue is not whether excess cost approach is right for handicapped children. The question is that, if one goes out to gather the data, the accounting systems do not generate the data.

However, that could be true of any Federal formula that has ever existed. The accounting systems are established. Data are reported, and collected in order to meet some requirement.

If this subcommittee were to require an excess cost system, then the system could generate the data and information necessary to operate such a system.

So, I don't think that we have a question that the good minds cannot come up with how to run the system, and what the system ought to be. The question would be, if we use the logic that says that the system is not in place. Then, that would be true of any innovation in the country.

Mr. BRADEMAs. You have given me some cause for hope Mr. Weintraub.

Mr. Cornell?

Mr. CORNELL. Mr. Weintraub, I noted that you avoided getting into the cost of the program, but I presume that you agree with the earlier statement that 1 million of the handicapped children in the country are not receiving their basic constitutional rights, that they are not in school nor receiving any type of training.

Now, you recognize the fact, I am sure, that in any such program that stimulus, if we can call it that, is being given largely by the Federal Government to States who adopt such programs.

Have you any idea, or would you care to present any idea of the amount of authorization you think would be necessary as for as the Federal Government, in order to achieve the goal that you apparently have in common with NEA, of seeing that the educational needs of the handicapped are satisfied by 1978?

Mr. WEINTRAUB. I could give you a figure, and I would ask to be able to amend that, and make it an accurate figure. I will give you what I think is close to an accurate figure, which is probably in the neighborhood of \$2 billion additionally needed. If the Federal Government were to provide that, we would probably be very close to being able to provide relatively proper education for our handicapped children.

However, the important issue is that these children have the right to an education. We are involved in 40 court cases. We will be involved in more court cases. We will achieve education for all handicapped children, and the money is going to have to come from somewhere.

The court in the District of Columbia, as you have probably read recently, issued contempt citations against the mayor, the Superintendent of the Schools, the Board of Education, and the head of the Department of Human Resources, for failure to implement the court's decision.

The court said, when the District came back:

Then go to the Congress. We don't have the money in the District of Columbia to do what you are telling. We just cannot educate all these kids. It is the Congress' problem.

The court said:

No. You have to do it, if you have to take it from others, if you have to cut back on your physical education programs, if you have to cut back on your art program, if you have to cut back at a minimum, handicapped children must go to school. You cannot have some children sitting at home, while others get all kinds of additional benefits in school.

So the question is in terms of those million children. They are going to get an education. The question is who will bear that cost. Someone is going to bear it. It will be borne by the local taxpayers. It will be borne through Federal tax sources, or it will be borne off the back of other children, but it is going to happen.

I think that what we are calling for is the question of how much money. Last year the Congress doubled the amount of money appropriated for education for the handicapped from \$50 million to \$100 million. If it is \$200 million, or if it is \$680 million as the Mathias amendment would call for. If it is \$1.5 billion, we see that as a political decision that the Congress has to make to resolve the issue.

I would not want to see more than \$2 billion, because I am not sure that it is needed. But if you could come up with \$2 billion, or with \$680 million, we are saying that this is an issue separate from the question of whether these children should get an education or not. This is a right that they have, and it is a right that should be enforced.

We will pursue enforcing it. We would hope that this committee and the Congress would pursue enforcing it, even if it is no more than another \$10 million.

Mr. CORNELL. I don't know that anyone would challenge your statement. We know that every child has a right. Obviously, something has to be done, particularly to cover this 1 million handicapped children you spoke of, who are not receiving any type of education.

Could you give us an idea, I realize that some of this is recent in development, but you could give us some idea of States which you feel have developed rather adequate programs, or are there none?

Mr. WEINTRAUB. I would be glad to provide for the committee a chart, State-by-State, showing in terms of percentages of children served, percentages not served, money spent, money needed, those type of things.

[Material referred to not submitted.]

I think that from a policy standpoint, the new Massachusetts provisions are exciting. From a policy standpoint, the new Wisconsin law on education of the handicapped, which I think is probably the one or second most comprehensive law in the country, is terribly exciting.

The question of implementation of these things, and the agonies that people go through in the local districts, and the States coming up with the money to carry them out, I would think that Massachusetts, Wisconsin, Florida, and a number of other States are doing better jobs than other places are doing.

However, there are still children sitting at home.

Mr. CORNELL. I am happy to hear what you say about Wisconsin, particularly I note that in the local areas where I live, we have used our public schools to take care of the handicapped, the deaf, the crippled, and so forth.

At least, my observations have been that they have been doing quite a good job, whether they are covering, of course, all of the individuals that need this, of that I am not aware.

Thank you very much.

Mr. BRADEMAs. Mr. Jeffords?

Mr. JEFFORDS. I am curious, in the area of standards, as to what courts are doing with respect to where the duties to educate lie as far as the capacity of the child. Have they gotten into that question at all, as to which children must be educated?

Mr. WEINTRAUB. Yes. The courts borrowing from *Brown v. the Board of Education*, said that where the State undertakes to provide a system of free public education for its citizens, it must provide education for all of its citizens in equal terms.

The question came up, starting with the first court case, or the most famous, which was the *Parke* decision in Pennsylvania, the question came up as to who was educable. The schools were contending that there were very severely handicapped children who "could not learn, could not benefit from an education."

The courts have consistently thrown out that issue, saying that it is an improper distinction that is attempted to be made. The courts basically said that education is a process by which individuals learn to cope with their environment. All children are educable, even the most severely impaired child.

So, there has been no allowance for any distinction as to which children can be educated, and which children cannot be educated. The courts have consistently said that all children must be educated under the Constitution, and the 14th amendment.

The courts have said further, when they have ruled on those issues, that setting children off between agencies, saying that one child is the responsibility, because one child is over here in an institution in Vermont, let us say in Brandon State School, because a child is residing in Brandon, it does not deny him the opportunity for an

education. The State education agency must be responsible for coming in and assuring that that child will get an education, even though he is "the responsibility of the state agency."

I think that these issues have been consistently ruled upon by the courts. We have seen very little variation in the decisions in this area.

Mr. JEFFORDS. Have there been any questions raised in the area of States that are providing educational opportunities to the handicapped as to the kind of effort which is not acceptable to the court in the education of types of children?

Mr. WEINTRAUB. Two issues come into play. One is the question of free. Many States have had a procedure in which children who a particular school district did not feel that they could serve, the children were sent to a private school to receive their education.

The school district would, let us say, provide \$1,000 tuition toward that education, but the parents were charged an additional \$10,000, or \$5,000. The courts ruled that this is illegal. If the public had a responsibility to meet, and the public chose to meet it through utilization of a public or a private facility, it did not meet the requirements of the free public education if the parents were charged for that education.

So, the question of free public education is the one important aspect of that. The second is the question of appropriateness, and that is the answer to what is a very long and complex set of legal arguments. Basically, what the courts have relied heavily upon is to say that the children are entitled to an education suited to their needs.

Equal protection does not mean sameness, it means something suited to their needs. The question of what is appropriate, or what is suited to a child's needs, the courts realize is a question open for discussion and debate. What they have relied very heavily upon is the availability of due process hearings and procedures as a way of resolving, where there is conflict over what the school is proposing to be appropriate, and what the parents feel is appropriate.

So far that seems to be working fairly well. But the courts have not, and I would hope would not try to layout on some class basis what are the standards of appropriateness, simply because children vary so much.

Mr. JEFFORDS. You would feel, then, that congressional or State legislation would have a broad latitude in defining appropriate training?

Mr. WEINTRAUB. My hope would be that schools would be given the opportunity to provide and design appropriate programs, but that there would be appropriate due process or procedural guarantees for parents to make sure that they have some forum for resolving where there are discrepancies between what they feel is appropriate, and what the schools are proposing is appropriate.

Mr. JEFFORDS. You say that the Congress ought to be very concerned about that question, about what would be acceptable as far as appropriate training in the States?

Mr. WEINTRAUB. Any proposals we have made, and which have been considered by this subcommittee, in fact, in terms of vocational rehabilitation, had the notion of individualized programs in the way of getting some handle on that. In our testimony, we continue our

support of that notion, which we think would be a good addition to the due process guarantees.

Mr. JEFFORDS. I understand you taught in Vermont. Would you let me know what you feel about the special education and their programs?

Mr. WEINTRAUB. I think that Vermont has made some substantial gains. I believe that is 3 or 4 years ago that the comprehensive law was passed. I was sorry to see that the legislation dodged the issue at that time by putting off implementation of full compliance until 1980.

It is a tough thing when you end up with a bill, saying here are your rights, here are all your requirements, but you will get them in 1980. I must say that Vermont was not unique in that regard, and other States have done the same thing.

I think that there are some very good people, and some very good things happening. There are some very exciting programs. We are looking forward to sitting down and talking about them.

Mr. JEFFORDS. I wonder if you could step away from your role. There are significant differences between rural areas and urban areas as far as education of the handicapped children, are there not?

Mr. WEINTRAUB. I don't think that there is any question of that. I think that there is also a question of leadership. The question of whether a handicapped child gets an education is really left to the vulnerability, or the whim of some local decisionmakers.

So, you can go into communities in Vermont, I can show you some little rural community in Vermont that probably has the most incredible special education program I have ever seen. If you go 15 miles down the road, to a similar community, and there is absolutely nothing.

The distinction is that there is a local school superintendent in one community who believes in doing this, and there is another community with a superintendent who does not believe in doing it at all.

So I think that it is the kind of arbitrary and capricious decision-making that we wish to eliminate. I think that you have some rural areas in Vermont where they are doing a much more adequate job than some others.

Mr. BRADEMAS. Mr. Miller.

Mr. MILLER. I met with a group of teachers in the district which I represent last week, and it was their suggestion that perhaps two things are happening with regard to the handicapped. One would be that we might be overclassifying some children for the purposes of receiving extra funding. Second, the result is that you are siphoning off funds that should be made available to those who in fact are handicapped.

The school districts, perhaps because of the inadequacy of the funding for education, are playing a lot of games with this funding, and creating resources that will be available to the general educational community. This is done by classifying children into various categories that, in fact, may at the most be marginal, if in fact they come under any of the various categories.

Would you address yourself to that, where your association has looked into that, or do you see it as a legitimate problem?

Mr. WEINTRAUB. I think that it is a legitimate problem. The scope of the problem, I am not sure of. I could document it. It is one that the Council for Exceptional Children is very concerned about.

One gets caught in a catch-22 type of situation. If one puts resources into a school to help a certain group of children, it is very hard at times, almost impossible, because when one turns around there is another child who does not meet that classification, but who, however, has the problem.

It is very difficult, and almost inhumane to tell that person, no. There was substantial discussion on that question in the hearings that this committee held last year. There are those who would propose simply placing resources out in the field to do the things, and not have to worry about the question of who is handicapped, and who is not handicapped, and how to target the resources.

Internally, the Council for Exceptional Children would support that notion, if Congress were willing to come up with \$50 billion to put out to do good for mankind. That would be the ideal situation.

However, given the restrictions, or given the realities, one has to say that the funds have to be targeted to critical populations. As we pointed out earlier, we think that this population is definable, and we think that it is enforceable in terms of controlling the use of those funds.

I think that there are several things that are important to include within that regard. I think that the Congress in passing formulas ought to also specify the accounting and accountability requirements, and data requirements as a reporting requirement that they expect, instead of simply throwing the formula out to the administration, and then 3 years later being frustrated by the data reports that they get back.

So, I think the more specificity that the Congress gives in terms of the kind of data, the kind of requirements that it expects in utilization of that money will be helpful.

Secondly, I think the inclusion of the types of rights, the due process procedures that I was talking about, one of the main things that we find in California, in terms of many children inappropriately receiving services, was the question of discrimination in testing and evaluation.

The massive instances of Spanish-speaking children being determined to be mentally retarded on the basis of being given an IQ test in English when they could not speak English. It is incredible that one has to go to the Federal court to tell a psychologist not to give a test in English to a child who speaks Spanish, and on that basis to make a decision.

So, we have gotten these court orders, these rights and guarantees, and protection. We would hope that this subcommittee would reinforce these in legislation. We think that this plus the accounting and reporting mechanisms would substantially reduce the type of problem that you are talking about.

However, I think that as long as there are children who have needs out there, there will be a tendency to try to tear the walls down to get at the services. I don't know, if I were a little local teacher out there, and saw that happening, I am not sure how I could respond. It is easy sitting in this chair to call for those walls to be built up.

Mr. MILLER. To followup on your response. I notice that the National Council on Education states that there is a significant number of States that have no policy in terms of due process, either by regula-

tion or by statute, on how they are protecting the rights of all the children, rather than those who are legitimately handicapped and those who are not.

Are you suggesting that we establish the due process procedures? Mr. WEINTRAUB. You have established them clearly in Public Law 93-380 for handicapped children in terms of saying that States must develop a plan that will demonstrate how they will assure.

All I am saying now is that you go a step further and say that by 1978 they must assure. This is the first time, to my knowledge, that these rights guarantees appear in Federal law.

I can only speak to the importance of handicapped children, and I am sure that there will be others that will speak to that also, and to a wider range of children.

Mr. MILLER. What do we do? Do we do some kind of review of children who are classified for the various programs, and who are labeled emotionally disturbed, mentally retarded, physical disabled. Do we take a look at those children down the road a little bit to see that that label, if it is no longer applicable, that it does not travel with them throughout their educational career?

Mr. WEINTRAUB. Two things. The tremendous support that I would place on the individualized plan notion that I put in my statement. First, it requires a review every 6 months to a year of the status of the child, so that the child who is placed in a program that is not working, there would be some way to intervene; or a child who no longer needs the special services could be moved out of the special services. Second, the important thing, I guess, is the Buckley amendments, in terms of recordkeeping. Those provisions apply to these types of records, and there is a natural purging system. One might want to look and see if there are unique factors to this type of thing that could be dealt with.

I would be glad to explore that.

Mr. MILLER. There has been some suggestion that the placing of children, or moving children out of the main stream education into special programs really should not be the duty of the educational system. Perhaps there should be an independent screening board, so that we don't take children who have behavioral problems and move them into special education, because the teacher wants to get rid of them, and does not want the responsibility.

Perhaps there should be some kind of a board within the school district to review these, so that we do, again, use the resources for the purposes for which they are meant, and not to calm down some teacher down the line, and also perhaps to expedite getting those children who are referred into the programs as soon as possible.

Another complaint that I heard last week was the suggestion that the child be placed in a program in September, and now it is March, and I am finally getting the hearing on whether or not that should be done. I wonder if you might comment on that?

Mr. WEINTRAUB. The answer to it is a very elaborate one, and I would be glad to provide a more detailed answer. I will try to give a simple response, and that is.

Here again is where several things that are now in law, in terms of what States must plan for, are important. One is the notion of least restrictive environment, which basically says, that children will be

educated in the regular programs with modifications to those programs, and only placed in special programs when it is clear that they cannot be sustained, when they cannot have their needs met in the regular environment. That concept is required now in law in terms of State planning.

The second is the due process procedure, which says that guarantees against placing children in inappropriate programs, tries to create some legal skids to that occurring. I think that the legal machinery, the procedural machinery is there, and the policy machinery to accomplish that is there, I think that a great deal will need to be done in terms of education of educators, and improving their understanding, of this whole phenomenon, and improving the education of parents, so that parents know what their rights and the children's rights are, so that they can act as advocates for their children.

I would again be happy to provide a little more detailed explanation of this whole process. One of the things that we have been concerned about is handwagons. Everybody is interested in something called "main streaming" today, and a lot of the assumption is that we are going to take all of the handicapped children, who are in handicap programs, and we are going to dump them into the programs that did not work.

That is not main streaming, and that is not appropriate education. What is appropriate is dealing with children in the environments in which they need an education. Again, I think that the machinery is there to do it, it is just a question of formally putting the Federal stamp and requiring to meet those requirements.

Mr. MILLER. Thank you.

Mr. BRADEMAS. I have one other question, Mr. Weintraub, because you put very great stress on the importance of the guarantee of an appropriate education for all handicapped children, and suggested that compliance mechanisms on page 4 of your statement, point three, would give authority to the Commissioner to cut off Federal, State or local funds for education until noncompliance has been remedied.

Now, what do you mean by that? For example, would you cut off all title-I ESEA aid for an entire State, if there has been a lack of compliance with respect to educating the handicapped?

Mr. WEINTRAUB. I think the question would be who is not in compliance. If a particular school district is not in compliance, then that school district should be in jeopardy of loss of all its Federal funds.

I know that there is always argument as to whether that ever occurs. First of all, the politics of that are in a sense a valuable—I am not sure that there are many school districts that want to face and negotiate with the Commissioner, and have to deal with the publicity of that fact, that they are forcing their handicapped children to sit at home.

The second thing is that this type of procedure is not unusual. The Federal Government does not force States. I would contend, though, when you look at the Buckley amendments, there is an incredible amendment in which the Congress of the United States made tremendous demands on changing the behavior, and the way schools act,

required additional costs for school districts, and not \$1 is provided under the Buckley amendment, and there is a threat of the loss of all your Federal funds for failure to comply.

We see very little difference in terms of this. We see this as an issue certainly equal of our school records.

Mr. BRADEMAS. Thank you, Mr. Weintraub, for a very useful statement. We appreciate it very much indeed.

Our final witness today is Mr. Carl J. Megel, director of the Department of Legislation of the American Federation of Teachers, AFL-CIO.

Mr. Megel, we are very pleased to have you before our subcommittee again, and why don't you go right ahead, sir.

STATEMENT OF CARL J. MEGEL, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF TEACHERS

Mr. MEGEL. Thank you very much, Mr. Chairman, and members of the committee. I have a short statement, so I think that I will read it.

My name is Carl J. Megel, and I am the director of the Department of Legislation of the American Federation of Teachers, an organization of nearly 500,000 classroom teachers affiliated with the AFL-CIO.

We are pleased to have the opportunity to speak in support of the legislation which would guarantee the rights of every handicapped child in the United States to an education to the extent of his capacities, and to prepare him for gainful employment in accordance with his abilities.

The world has been most unjust and unkind to the handicapped. Ancient nations and tribes have subjected untold misery and even death to the handicapped. Such cruelty was inflicted even though their disability was not of their making and in most cases an accident of birth.

There are approximately 7 million handicapped children in our Nation. All are in need of proper education facilities. Although many of these children are enrolled in our public schools, only a very few receive special education.

One child may be getting an hour a week of special therapy, a second child may be receiving intensive training in reading skills, while a third child idly sits in a classroom unaided and neglected.

The truth is that hundreds of children in classrooms across our Nation are failing to develop or to learn simply because they have never been identified nor have they been provided with special services.

Other thousands of handicapped children live in large impersonal State institutions stagnating for lack of care, while other thousands are simply sitting at home, untouched by any social or educational service.

This fact cannot be justified morally or educationally. It represents a drain on public welfare facilities while at the same time an individual with ability to become self-supporting but who because of lack of special education or training becomes a liability instead of an asset to our society. Training for employment is the special consideration of the President's Committee for Employment of the Handicapped. It has been my privilege to have served, by appointment of the President, on this committee for the past 12 years.

Their annual meeting is attended regularly by more than 3,000 persons representing every State in the union. The purpose of this conference is to demonstrate the latent abilities of the handicapped to provide functional services for any employer.

Rarely do you find a family in which there are not handicapped persons. In my own case, if I may give a personal reference, two of my grandchildren were born blind. The difficulty which they experienced in finding schools prepared to teach braille or to supply braille text books, tape recorders and other essentials can hardly be documented.

In spite of the tremendous handicaps, both of these young people managed to graduate with high honors from a State university, and are now gainfully employed.

What is true for the blind children is true for the deaf children and even in a greater degree for the mentally retarded and otherwise physically handicapped. Moreover, another fact must be considered. Of the more than 7 million handicapped children, the greater numbers are to be found in our cities.

At least 10 percent of these handicapped children are living in New York and in Chicago. Accordingly, we support categorical aid to help the States equalize their financial requirements with special consideration for large cities' handicapped population.

We further support the following items:

1. Provide Federal payments of 75 percent, or about three-fourths, of the average additional costs required to provide education for handicapped children, and to be paid to a State for every child to whom they are providing a free appropriate public education.

2. Require any State participating in this program to provide a free appropriate public education for all handicapped children.

3. Allow the State to a right to formulate education policy for all handicapped children.

4. Require the State to educate handicapped children together with children who are not handicapped, except in those most severe cases.

5. Since services for handicapped children require employment of teachers with special education training, we strongly recommend that direct allocation be made to colleges, and universities which set up programs for training teachers of handicapped children. This may not necessarily become part of this bill, but this is certainly something that is extremely important.

We would estimate that such a program would cost approximately \$2 billion in the first fiscal year, if you properly implement it, and if you divide that by seven, it is not very much. Increasing amounts would be expected in the subsequent years.

We thank the committee and appreciate the opportunity to make this presentation. We encourage the committee to evaluate our suggestions in the preparation of suitable legislation.

Mr. BRADENAS. Thank you, Mr. Megel, for a most thoughtful statement. I just have one question for you.

Do you find that teachers—you may answer it any way you want to—teachers generally and members of the AFT are increasingly interested in pursuing careers in special education, and the education of handicapped children?

Mr. MEGEL. Yes, that is very true. More and more teachers are going into special education courses to be able to teach special educa-

tion. This is a true statement. There was a time when very few teachers and some teachers were even horrified by the idea of going into some of these classes and teaching. Today, there is a tremendous increase in enrollment in these courses to provide teachers with the knowledge.

It is not only that they have to have special skills, but they also have to have within themselves the compassion for the people that they are teaching, over and above what an ordinary teacher would have to have.

Mr. BRADEMAS. Thank you very much.

Mr. JEFFORDS. I understand from your statement that you believe that it is a good idea to try and keep these handicapped children in the locality in which they are living, perhaps, and away from the private or State institutions. Is that a better approach, do you think?

Mr. MEGEL. Yes, by far.

Mr. JEFFORDS. You also believe, or state that special teachers are needed for the different types of handicaps.

Mr. MEGEL. That is correct. You talked a minute ago about defining the handicapped, well, the blind, the deaf and the crippled who have good minds are of a different kind, they need a different kind of training than those who may be emotionally or mentally disturbed. There is a great difference there. One is a physical disability, and the other is a mental disability. Therefore, the teachers who teach those need special and different training, and the institutions where they go should be geared to that kind of training.

Mr. JEFFORDS. I suppose it would be advisable to keep them in the family atmosphere, and perhaps give some training to the family on how to handle the handicapped.

Mr. MEGEL. That is part of the program in some of the areas where this is done. Yes, indeed.

Mr. JEFFORDS. But you would also agree with me, would you not, that probably in rural areas, where you have children dispersed throughout the State, that in order to live up to these things you stated, it would be more expensive to provide that kind of specialized training, and to keep them in the family and away from the institutions than it would be in the city areas?

Mr. MEGEL. That is very true, but there are not as many of them. Congressman Brademas knows that, and in Indiana and Illinois we have a special education act, and part of this for the blind they have what they call "home education programs," and the instructor is a blind person who goes from one home to another, to teach blind children.

For instance, there are two things about that. There are those who are born blind, and there are those who become blind by some accident. In any case, the family has a psychological barrier to overcome, and this person who comes to their home, first of all, has to get the family psychologically geared to understand the problem, and then it can be solved.

The experience that I related in my own case, I know that it can be. The other thing is that someone who has become blind after being a sighted person, there is a different psychological problem that has to be overcome. The home teachers travel from one place to another, and go to the homes and teach first the family, and then the child. It has been a very, very successful program.

Mr. JEFFORDS. Then you would agree with me, would you not, that there are other factors to be considered in the distribution of aid, and identify that a large percentage live in a small area as compared to the larger cities.

In other words, the problems of transportation, the problems of availability of teachers, and getting these students to appropriate types of training.

Mr. MEGEL. My reference here to Chicago and New York, particularly at 10 percent, is that this amount of money in that area should be in a proportion to the people. Not that it be a flat grant for the State without reference to the number of people there.

Certainly the people in the rural areas and this is true in rural areas anywhere in the country, the expenses for the individual person is greater, but there are fewer of them.

Mr. BRADEMAs. Mr. Cornell.

Mr. CORNELL. Mr. Chairman, might I ask one question of you first. I gather from the statement on page 3, one of these items recommended would be the excess cost. The Federal Government would assume 75 percent of the average additional costs required?

Mr. BRADEMAs. Yes.

Mr. CORNELL. There was one thing that bothered me a little bit about that list of suggestions, which you have there, Mr. Megel, on page 3.

You state " * * * require the State to educate handicapped children together with children who are not handicapped except in the most severe cases." I suppose that this falls under the terminology of the "least restrictive environment."

Personally I think there are a lot of instances where this is necessary, especially in view of your next statement here: " * * * since services for handicapped children require employment of teachers with special education training * * *" You are going to, by necessity, have some type of special training program.

Back home we have a school for the blind, a school for the deaf, and schools for those who are crippled, and so forth, and at least from my observations, I cannot see where they have been harmed by that type of education.

We have people, obviously, as you mentioned, who are trained particularly for that purpose. So it is my observation we could go overboard in stressing too much of the fact that there should not be too much of a restrictive environment. There has to be a certain amount of that, whatever one means by restrictive environment.

There has to be a certain amount of training of the handicapped with other than handicapped children in view of the special educational training that the teachers should have.

I like the tone of your statement in general. There is just one little observation that I would like to make. You stress training the handicapped for gainful employment, in order that they can be self-supporting.

This is certainly a good objective, but I think we could again overemphasize that in the fact that some of these people are never going to be able to be self-supporting, or to obtain gainful employment.

I think that we also ought to stress the fact that this education is necessary just to give them a greater enjoyment, and appreciation

of living. I would like to think that when Jefferson changed Locke's expression "life, liberty and property" to the phrase "life, liberty, and the pursuit of happiness," that he envisioned this sort of thing. That we are educating people simply to enjoy the fact that they live.

Mr. MEGEL. I agree with you entirely. There are some people who are never going to be gainfully employed. But the objective is to get as many as possible off the relief roles and to get them a job, so that they can work. We cannot get them all.

Mr. BRADEMAs. Mr. Miller.

Mr. MILLER. My question goes to the excess cost thing, again. What does that mean, have you had feedback from the schools, from States on what kind of revenues that frees, turns loose in terms of what they now have committed? What is the anticipated cost?

Mr. BRADEMAs. I cannot answer.

Mr. MILLER. On this chart for the State of California it is \$220 million for the handicapped.

Mr. BRADEMAs. As I recall, and I wanted to go back and look in the hearings.

Mr. MILLER. There are probably more children brought into the program as a result.

Mr. BRADEMAs. Yes. My memory is, and counsel will refresh it, if I am mistaken, that represents about a \$3 billion authorization. That is the excess cost bill.

Mr. MILLER. The AFT is in support of that?

Mr. MEGEL. I said \$2 billion, approximately.

Mr. BRADEMAs. It is a lot of money.

Mr. MILLER. That is all.

Mr. BRADEMAs. Mr. Megel, thank you very much for your testimony. It is always good to have you before our committee.

The subcommittee is adjourned until tomorrow morning at 9:30, in this same room, 2261.

[Whereupon, at 11:20 a.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Thursday, April 10, 1975.]

EXTENSION OF EDUCATION OF THE HANDICAPPED ACT

THURSDAY, APRIL 10, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SELECT EDUCATION
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to recess, in room 2261, Rayburn House Office Building, Hon. John Brademas (chairman of the subcommittee) presiding.

Present: Representatives Brademas, Lehman, Cornell, Miller, Bell, and Jeffords.

Staff present: Jack Duncan, counsel, Patricia Watts, administrative assistant, and Martin LaVor, minority legislative associate.

Mr. BRADEMAS. The subcommittee on Select Education of the Committee on Education and Labor will come to order for the purpose of continuing hearings on legislation to provide additional and improved Federal assistance for educational services for America's handicapped children.

Yesterday, the subcommittee heard from three distinguished witnesses, representing the National Education Association, the American Federation of Teachers, and the Council for Exceptional Children.

Today, we continue these hearings and we will hear from representatives of the community on behalf of handicapped children.

It is apparent that there is a great need for expeditious consideration of this legislation. Only last week a Federal judge held the District of Columbia, its Superintendent and the Mayor in contempt of court for failing to supply handicapped and exceptional children with "an education geared to their needs and from which they can benefit."

This contempt citation was issued by the U.S. District Court for the failure of the parties to comply with a decree issued on July 1, 1972, in which the judge found the city to have an obligation to provide publicly supported education to District of Columbia handicapped and exceptional children.

The Chair would also note that in fiscal year 1975 the Appropriations Committee responded to this subcommittee's recommendations and has more than doubled Federal assistance to the States to provide services to our handicapped youngsters, from \$47.5 million in fiscal year 1974 to \$100 million in fiscal year 1975.

It seems, at least, to the Chair, that this type of commitment by the Federal Government must continue to increase and this subcommittee must expedite legislation to provide the means by which Congress can supply this assistance.

We are very pleased to have as our first witness, George Smith, Superintendent of the San Diego School Board, San Diego, Calif.

Mr. Smith, won't you please come forward. I might say that we have a distinguished member of this subcommittee, Mr. Miller, from your home State, so you will be well protected here this morning.

I understand that you are accompanied by an old friend of the subcommittee, Mr. August Steinhilber, who is assistant executive director for Federal Relations of the National School Board Association, and by Michael Reznick, legislative specialist with the National School Board Association.

STATEMENT OF GEORGE SMITH, SUPERINTENDENT, SAN DIEGO SCHOOL BOARD

Mr. SMITH. Mr. Chairman, and honorable members of this congressional subcommittee, I am George Walter Smith, an 11-year member of the San Diego Unified School District, having served three times as its president, and also vice president of the National School Board Association.

It gives me great pleasure to be here for two basic reasons. Usually you don't hear from San Diego, unless we are here begging for impact aid; and secondly I am here because it gives me a great deal of pleasure to share with you some of the things that we have done in our school district for the educationally handicapped, which I am sure you will be proud of, and hopefully I will point out, as the honorable chairman said, a continual need for the Federal Government to support this kind of legislation.

The San Diego Unified School District has been an interested pioneer in the development of a very wide variety of special education programs for school pupils having special needs.

These programs have been developed in San Diego as needs were systematically noted by the school staff and programs have been developed in San Diego to meet these needs. There are many examples of this process.

The program in San Diego for educable mentally retarded pupils was in operation long before State or national attention was being paid to this problem. There were programs for pupils in the educable mentally retarded group prior to the State legislation which made these programs mandatory in approximately 1949.

In addition to programs for retarded, the San Diego Unified School District has conducted special programs for children with learning disabilities since the early 1950's. Our program for gifted pupils was started in approximately 1950, and has been actively in operation since that time. It will be recognized that this was far before the Sputnik era, when such programs became a matter of international attention.

Special education programs in San Diego include all of the following which aim at providing a full gamut of services to all children with special educational needs.

We have a home teaching program for pupils who are unable to attend school for reason of severe illness or who are actually hospitalized. This program is conducted by teachers who go to the pupils' home or by way of multiple telephone hookup so that the teacher can conduct a class of homebound students over the telephone.

With the assistance of special Federal funds, and we thank you for that, we anticipate experimenting with special equipment for next year, which will allow the telephone teacher to present materials visually over the telephone hookup.

Language, speech and hearing services are provided on a regular basis to individual pupils needing these services. The speech and hearing teachers are all, of course, specially trained, and provide service to pupils at all schools in the city, this being about 157 different schools.

Our program for deaf and severely hard of hearing children is conducted both by special classes at regular schools, and by integrating pupils with hearing problems in regular classes with special assistance provided.

Our program for these pupils begins usually at age 3, and the pupil is well on the way toward handling regular school work by the time of ordinary first grade admission.

During the past 2 years, the district has added a program which now includes 36 children who are aphasic or severely communication handicapped. These pupils are in special classes with six per class and with specially trained teachers. They are children of regular school age who on admission to the program often are totally unable to communicate.

For the orthopedically handicapped, we have had a special school with specially trained instructors and necessary equipment. The aim for these pupils is to enable them to overcome their handicaps, so that they may take their place as soon as possible in regular school programs. A great many of them presently are in such programs, particularly in the secondary schools.

Our program for visually handicapped and blind includes all the standard approaches and has received national recognition for pioneering work for use of the Optacon reading device.

The pupils are, of course, taught to read braille, but the use of the Optacon enables these pupils by the use of this electronic device to read regular print from periodicals or other such material without having any special treatment of the printed material.

The pupils read by sensing different vibrations through their fingertips.

Again, San Diego has pioneered in mobility training for blind pupils, and one of our instructors in this field has just been invited to spend some time in Germany to teach these techniques to instructors in continental Europe.

By this mobility training our blind pupils learn, by the use of only a long cane, to go around the city by themselves, do their own shopping, ride buses, and perform other necessary life functions which are extremely difficult for the blind.

In this connection we are developing daily living skills instruction for blind and orthopedically handicapped, so that they may work at school with actual home equipment so as to be able to take care of themselves.

We have in San Diego two schools for severely mentally retarded pupils. Initial emphasis in these programs is that of learning ordinary self-care techniques. Some of these pupils are doing beginning reading in the upper age groups at the present time.

In addition, we have been one of a local consortium which is providing vocational training in a sheltered workshop setting for retarded and other handicapped youngsters. Many of them are able to earn significant amounts of money in this type of setting, and some will be able to work in regular industrial settings as they get older.

There are approximately 2,400 pupils in our programs for educationally handicapped and learning disabled in our regular schools. These classes are conducted with small class sizes by teachers having special training.

Pupils do not remain indefinitely in these classes but are brought as rapidly as possible to a point of competency of being able to take their place in regular instructional settings. Students and programs are periodically reevaluated.

During this school year, approximately 600 pupils are in classes for educable mentally retarded where there is an emphasis on modified curriculum to enable these slow learning pupils to achieve maximum education.

There is a significant emphasis on work experience programs at the high school levels so that, here too, these pupils may become self-supporting.

Our gifted program mentioned above includes more than 6,000 pupils this year. This program has been acclaimed throughout the State and nationally as a model in gifted education.

The list of pupils who are graduates of this program and who have received scholarship acclaim along with spectacularly successful college careers is impressive.

There is a considerable use of San Diego's rich community facilities in supporting our gifted program. Salk Institute has cooperated regularly with our high school program. Other research facilities, including the Naval Electronics Laboratory, have made fine contributions and continue to do so.

Dr. Jacob Bronowski was one of the early and steadfast supporters of our program.

In order to maintain specialized programs of this type a number of supporting facilities are essential to maintain progress in the programs and maximum effectiveness. Under State law and district policy, any candidate for one of these programs must have had a thorough individual evaluation with reference to his abilities or handicaps, and must be considered and certified by a screening committee which consists regularly of a psychologist, a physician, a special education administrator, and a special education teacher.

Other resource personnel are called upon as needed. These committees not only see to the admission of the children in a proper manner, but they also assist in making instructional plans for these children.

Children having special difficulties also need services other than those that can be provided directly within the classroom. Obviously special curriculum development is necessary.

We have a regular program of curriculum development for all these special fields.

Additional counseling is often necessary and our trained district counselors spend a very significant proportion of their time in working with pupils in special education and with the families of these pupils.

Almost without exception each pupil in our special education programs receives a complete psychological evaluation as needed for his proper placement and guidance.

The committees mentioned above are charged not only with admission, but also with periodic individual reevaluation of the pupils in the programs. Regular evaluations are also conducted of the programs themselves and their effectiveness.

Thus it may be seen that the San Diego Unified School District has been for a great many years a constant and noteworthy supporter of special education for all children having special needs.

To summarize the figures quoted above, approximately 10,000 pupils in the academic year of 1974-75 in San Diego Unified School District have been given special educational opportunities in programs especially geared to their needs through a balanced program including specially trained teachers, aides, and specialized curriculum and equipment.

However, in these times of inflationary costs for all of education as well as all costs of human living, the maintenance of special education programs is becoming increasingly difficult.

It is true that the State of California provides special apportionment allowances in various amounts for pupils in these special education programs, along with regulations and specific mandates.

These allowances have become increasingly inadequate as time has gone by. Most of them were entered into the State Educational Code as stated dollar amounts, and all of us know what has happened to stated dollar amounts during the past 10 years, much less these past 3 or 4.

Education of pupils in special education programs is a very, very expensive operation. We have no doubt that the effort to maintain these programs is worthwhile, despite their expense.

It seems extremely probable that special education of the handicapped pupil may be a social economy in the sense that he will become through education a self-supporting citizen, and not a charge of the welfare system.

However, in the present situation a large share of excess costs of special education for handicapped children must be taken from the general fund which applies to education of all children. It does not seem fair that the education of all children should be depleted in order to accomplish this very worthwhile purpose.

Our school district must pay from general education funds the excess cost necessary in special education. The detailed table below shows the percentages of cost borne by the school district for the various special programs maintained.

Mr. Chairman, I am happy to be here to share with you our success story, because knowing my own Congressman from San Diego, and knowing a lot of you, I know that you like to hear some of the successes, and not always the failures. I thank you for giving me this opportunity to testify before you.

Mr. BRADENAS. Thank you very much, Mr. Smith, for a most interesting statement. I am sure that you will be reassured that we have another California member of the subcommittee, the reigning minority member, Mr. Bell.

Mr. BELL. I will say, Mr. Chairman, that it is a great pleasure to welcome you, Mr. Smith, before this subcommittee as a fellow Californian, and say that your great works there have been noted throughout the State, and throughout the Nation.

Mr. SMITH. Thank you very much, Congressman Bell.

Mr. BRADEMAs. Mr. Smith, let me put a few questions to you, in light of your interesting and provocative statement. You say that there are approximately 2,400 pupils in your programs for the educationally handicapped and learning disabled in your regular schools.

How many children within the San Diego School District, which I take it is a unified school district as you have been referring, how many children of school age who are handicapped, who are not provided for by some special education program?

Mr. SMITH. I am very happy to say, Mr. Chairman, that at the present time, because of our dipping into our own local resources, we do not have handicapped youngsters on the waiting list, and this is unusual for a city that has 126,000 students.

Mr. BRADEMAs. To what extent is the situation that you have described in San Diego repeated elsewhere in your own State? That is to say, are there—assuming that you have had the remarkable success that you have had in San Diego, is this true of every other city and community in the State of California?

Mr. SMITH. I would say not, and not only in California, but throughout the Nation.

Mr. BRADEMAs. That is not my question. Why are you able to do as well as you suggested in San Diego? What is the secret of your success?

Mr. SMITH. The secret of our success, basically, is parents of handicapped youngsters who have come to the school board, telling us what they are desirous for their youngsters to receive, and our response to their interest.

Mr. BRADEMAs. What I am trying to get at is, financially, how have you gotten the money? Is this money that is voted by the school board of San Diego, which could be voted by the school, if they made that judgment at the local level?

Mr. SMITH. Provided that they make the judgment at the local level. As I said, the attachment will show you how much money is placed into our programs. What I am saying here is that if the taxpayers would vote against higher taxes, and so forth, we in San Diego would find it even more difficult to get the necessary funds to do the job that we have been able to do over the past 25 years, or 30 years.

Mr. BRADEMAs. I am simply trying to learn from your experience, Mr. Smith, is it the case that in San Diego, your local school board, and the local taxpayers made the judgment that they want to contribute enough money from the local funds to meet the needs of the education of school age handicapped children in that school system?

Mr. SMITH. That is right.

Mr. BRADEMAs. It would be possible for other school systems in your State to come to the same judgment?

Mr. SMITH. Come to the same judgment, provided that the citizens vote the taxes.

Mr. BRADEMAs. What about the contribution that you have described which is a special State allowance from California, the paid

tax dollars? What is the basis for the determination of the amount of the special State allowance that you have received in your school system for the education of handicapped children?

Mr. SMITH. Just for an example, let us take the gifted program. As you know, the State formula allows—

Mr. BRADEMAs. I am not asking about the gifted. I am asking about handicapped children.

Mr. SMITH. We consider that the gifted can be as handicapped as the handicapped, and we put them in a special category.

Mr. BRADEMAs. What I am talking about is, how in the State of California is it determined how much money in State tax dollars is channeled to local school systems in the form of what you described as a special State allowance for the education of handicapped children?

Mr. SMITH. No. 1, for the various types of handicapped youngsters, Mr. Chairman, there are various amounts of money allocated, and the formula is written into the legislation itself. It is usually a stated number of dollars per pupil over and above the ADA, the average daily attendance formula that we get for these youngsters. It is in addition to the regular State dollar amount that they give us.

Mr. BRADEMAs. So it is a certain amount of money by State statute that is provided to the San Diego School System for speech and hearing handicapped, another amount of money, presumably, for the orthopedically handicapped, and a different amount of money for deaf and blind children. Is that the way it is done?

Mr. SMITH. That is the way it is done.

Mr. BRADEMAs. Every school system in the State, presumably, gets the same amount of money per child in that category?

Mr. SMITH. Exactly.

Mr. BRADEMAs. There is no matching requirement?

Mr. SMITH. There is no matching requirement. However, in our gifted program, there is a matching requirement.

Mr. BRADEMAs. Is it a requirement of State law that those moneys must be expended for the children in that particular category?

Mr. SMITH. That is right.

Mr. BRADEMAs. Do you certify to the State how many children are in each of these categories in order to get the money back?

Mr. SMITH. That is right.

Mr. BRADEMAs. The reason I press this, and there are several reasons, but one is that I am encouraged to see that there is such sensitivity in your State to this problem. I am still not clear on how much money we are talking about, and that is another problem.

What especially interests me are the substantive judgments made in the State of California as to the variety of amounts of money in the form of a special State allowance. The variety is to be provided for each category of handicapped who makes the judgment that, for example, your State legislation must put up x amounts of dollars for orthopedically handicapped, but x plus y dollars for deaf-blind children, and x plus y plus z for trainable mentally retarded. How are those judgments arrived at?

Mr. SMITH. I think the first process, Mr. Chairman, is that it comes from the State department of education itself, which goes to the State legislature, and probably as it is always the case, they never get all that they ask for.

The State department of education gets its figures from us, from the districts, who say that it will take more money for an orthopedically handicapped youngster than it would, for example, for a blind person, because of these reasons.

Mr. BRADEMAs. How do they decide the question? How do they answer the question. "Why does it take more money for one category rather than another category?" How are those substantive judgments made?

Mr. SMITH. No. 1, even in the way of facilities, for the orthopedically handicapped, wheelchairs, buses with facilities to get them on to the bus to take them to school, et cetera. All of these costs are figured in, which will give us the figure that we need, to say that an orthopedically handicapped youngster in San Diego would cost more than a youngster over here that we have to supply with braille, et cetera.

We decided on the basis of the services that each of these particular youngsters in these categories must have in order to get the maximum benefit of the educational program.

Mr. BRADEMAs. The reason that I put these questions to you is that one of the problems we have had in coming up with an excess cost approach, as represented by my own bill, is trying to define what it costs to educate the handicapped children in different categories.

We are told by some of the authorities, and I believe there is an HEW study that we have just received, it is very tough to find out. It is very tough to know. I am hearing you saying that at least in the State of California, you have developed some sort of ballpark capacity for making those judgments.

I would be very grateful, and I am sure my colleagues would be, if you would supply to the subcommittee any study that you may have together with a copy of your State statute, which would help us understand how you came to those judgments.

Mr. SMITH. I have, Mr. Chairman, a second statement, which is entitled "Cost Analysis of Special Education Programs for the San Diego Unified School District," and I think that this will supply you with what you are asking about.

I must say that we have not found it too difficult, Mr. Chairman, to come up with these cost figures. I think that your counsel here has this particular study.

[Cost Analysis of Special Education Programs follows:]

COST ANALYSIS OF SPECIAL EDUCATION PROGRAMS

As you requested I am enclosing several different analyses of district special education programs with relation to state special apportionment income.

Attachment "A" is a chart including all programs where the funding problems are critical which shows several different types of analyses of district special education costs. The first column in the chart shows the percent of the total cost of program which is paid by the district from non-categorical district funds. The second column shows the actual average per a.d.a. unit of special apportionment funds received for the year 1974-75. This figure was developed by dividing the projected special apportionment income by the program a.d.a. and does not relate precisely to the stated allowances in the state education code. These are actual dollars received and will vary from the stated figures because of the inclusion of summer programs in some cases, and because of some combining of programs having different unit allowances.

The third column was constructed by adding the present special apportionment income to the district contribution from non-categorical funds and dividing this total by the program a.d.a. This figure represents that amount of special apportionment income which would be necessary if the state actually paid the excess cost of operating these programs.

It is interesting to note that the longer established programs tend to be the less adequate in state funding. This is obviously because the allowances were stated in the code in dollar amounts and have been unable to keep pace with increased costs. In other cases, such as the speech and hearing program, there is no change in the need for a regular program for the pupils involved and the program cost is completely excess over and above general education program costs.

Attachment "B" is an itemized breakdown of the program projections for 1974-75 from which the figures in Attachment "A" were developed.

It is probable that any comparison available at the present time to the costs in other districts for these same programs would be inadequate since it is my belief that our complete and accurate cost accounting system is almost entirely unique within the state. In general my observation is that many other districts include in their costs of special education only those costs which are related in the classroom. These figures do not include the required program support costs such as the required activities of psychologists, curriculum development, etc.

The real conflict shown by these data is that the state sets up very stringent rules on program conduct, class sizes, and other such matters. These rules must be followed and the following of these rules makes it completely impossible for a school district to conduct the program within the special apportionment income allocated. At the present time the only alternative is even more expensive. In the absence of an available special program the school district would be essentially compelled to grant applications under Chapter 8.2 of the Education Code (Sedgwick Act). When these applications are granted it is necessary for the district to pay that amount which would be expended on the pupil if he were attending in the school district. However, the district does not receive funding of any kind for this pupil since the funding is based entirely upon a.d.a. Thus the applications approved under the Sedgwick Act result in the school district's paying out money which is not received. This can only come from general non-categorical funds.

It appears critical that these data should be presented as often and as effectively as possible to the state so as to improve reimbursement for special education. The counterargument may be that the Master Plan for Special Education will obviate the necessity for changing these funding allowances. However, in its present form it is essentially impossible to do a cost analysis of the master plan since the master plan is not sufficiently in operation so that detail can be developed. The general impression we have at present is that under present parameters there will be little significant improvement in the net funding level.

ATTACHMENT A COSTS OF SPECIAL EDUCATION PROGRAMS

Program	Percent of non-categorical district contribution	Mean special apportionment funding per ADA unit	Necessary special apportionment funding per ADA units to cover excess costs
Educationally handicapped.....	25	1,485	2,136
Educable mentally retarded.....	44	481	1,358
Aphasic.....	(1)		
Speech and hearing.....	52	2,157	4,519
Visual (SDC).....	(1)		
Visual (RPD).....	53	2,150	4,534
Orthopedically handicapped (SDC).....	42	1,014	2,209
Pregnant minors.....	24	715	1,170
Homebound.....	61	1,795	5,719
Hearing (SDC).....	15	2,619	3,210
Deaf-blind (SDC).....	34	2,675	4,383
Trainable mentally retarded.....	37	928	1,831
Transportation of handicapped.....	42	389	673

¹ Adequate.

SAN DIEGO UNIFIED SCHOOL DISTRICT—FINANCE DEPARTMENT

Special education cost analysis fund AF estimated 1974-75—Adopted budget

Fund AF—Educable mentally retarded:		Amount
Total Appropriations Fund AF	-----	\$893, 797
Other direct costs*	-----	175, 628
Total direct costs	-----	1, 069, 425
Less: Direct costs of general education	-----	(346, 932)
Net special costs	-----	722, 493
Less: Special apportionment	-----	(256, 008)
Net direct contribution from noncategorical funds	-----	466, 485
Program ADA**	-----	532. 16
Cost per ADA	-----	876. 59
* Fund AA Student Services Division Support		
Program and description		Costs
5051 Central direction, supervisor of instruction	-----	\$48, 359
6424 Counseling services	-----	40, 972
6504 Guidance services	-----	\$2, 665
7001 General administration	-----	3, 632
Total	-----	175, 628

** 7-12 in 6-period equivalents

ATTACHMENT B—SAN DIEGO UNIFIED SCHOOL DISTRICT FINANCE DEPARTMENT

Special education costs analysis fund AD estimated 1974-75—Adopted budget

Fund AD—Educationally handicapped:		Amount
Total Appropriations Fund AD	-----	\$3, 044, 798
Other direct costs *	-----	464, 009
Total direct costs	-----	3, 508, 807
Less: Direct costs of general education	-----	(685, 642)
Net special costs	-----	2, 823, 165
Less: Special apportionment	-----	(1, 962, 606)
Net direct contribution from noncategorical funds	-----	860, 559
Program ADA **	-----	1, 321. 64
Cost per ADA	-----	651. 13
* Fund AA student services division support		
Program and description		Costs
5051 Central direction and supervisor of instruction	-----	\$52, 210
6424 Counseling services	-----	275, 499
6504 Guidance services	-----	130, 564
7001 General administration	-----	5, 736
Total	-----	464, 009

** 7-12 ADA in 6-period equivalents.

SAN DIEGO UNIFIED SCHOOL DISTRICT, FINANCE DEPARTMENT
FUND AG ESTIMATED 1974-75 (ADOPTED BUDGET)

	PH aphasic (SDC)	PH speech/ hearing (RPO)	PH visual (SDC)	PH visual (RPO)	PH orthopedic (SDC)	PH pregnant minors (SDC)	PH homebound (ind. inst.)	PH P.E. rem.	PH hearing (SDC)	PH multi incl. deaf-blind (SDC)	PH blind allowance	Total
Total fund AG expenditures:												
Total appropriations fund AG	105,646	633,409	37,407	115,919	495,362	37,350	236,779	76,688	577,827	109,739	48,230	2,474,356
Other direct costs 1	5,350	20,330	6,420	4,280	25,679	3,209	5,351	10,699	22,471	3,210	0	106,999
Total direct costs	110,996	653,739	43,827	120,199	521,041	40,559	242,130	87,387	600,298	112,949	48,230	2,581,355
Less direct costs of gen. ed.	(21,948)	0	(25,637)	0	(116,812)	(16,020)	(26,770)	(54,490)	(96,754)	(13,284)	0	(371,715)
Net special costs	89,048	653,739	18,190	120,199	404,229	24,539	215,360	32,897	503,544	99,665	48,230	2,209,640
Less special appointment	(104,400)	(312,000)	(42,216)	(57,008)	(185,470)	(15,000)	(67,600)	(87,575)	(410,849)	(60,840)	(48,230)	(1,391,168)
Net direct contribution from non- categorical funds	(15,352)	341,739	(24,026)	63,191	218,759	9,539	147,760	(54,678)	92,695	38,825	0	818,452
Program ADA	37,57	144,67	42,83	26,51	182,97	20,98	37,66	75,33	156,85	22,74		748,14
Cost per ADA	(408.62)	2,362.20	(560.96)	2,383.67	1,195.60	454.67	3,923.53	(725.85)	590.87	1,707.34		1,093.98
Fund AA student services division sup- port program description (costs):												
5051 Cent. direction superv. on	3,869	14,701	4,643	3,095	18,570	2,321	3,869	7,737	16,249	2,321	0	77,375
6424 Instr.	231	1,878	277	1,185	1,109	139	1,231	462	971	139	0	4,622
6504 Guidance services	1,197	4,551	1,437	958	5,748	718	1,198	2,395	5,030	718	0	23,950
7001 General administration	53	200	63	42	252	31	53	105	221	32	0	1,052
Total	5,350	20,330	6,420	4,280	25,679	3,209	5,351	10,699	22,471	3,210	0	106,999

17 to 12 in 6 period equivalents.

SAN DIEGO UNIFIED SCHOOL DISTRICT—FINANCE DEPARTMENT

Special education cost analysis fund AH estimated 1974-75—Adopted budget

Fund AH—Trainable mentally retarded:

Total appropriations fund AH	\$964, 343
Other direct costs*	12, 242
Total direct costs	976, 585
Less: Direct costs of general education	(236, 194)
Net special costs	740, 391
Less: Special apportionment	(375, 360)
Net direct contribution from noncategorical funds	365, 031
Program ADA	404. 31
Costs per ADA	902. 85

*Fund AA student services division support:

Program and description	Costs
5031 Central direction, supervision of instruction	0
6424 Counseling services	\$12, 242
6504 Guidance services	0
7001 General administration	0
Total	12, 242

SAN DIEGO UNIFIED SCHOOL DISTRICT—FINANCE DEPARTMENT

Special education cost analysis fund AJ estimated 1974-75—Adopted budget

Fund AJ—Transportation of handicapped:

Total appropriation fund AJ	\$557, 704
Other direct costs	0
Total direct costs	557, 704
Less: Direct costs of general education	(0)
Net special costs	557, 704
Less: Special apportionment	(322, 481)
Net direct contribution from noncategorical funds	235, 223
Program ADA	829
Costs per ADA	283. 74

Mr. BRADEMAs. I conclude from your testimony that, at least I tentatively conclude from your testimony that if Congress wrote a law based on excess costs concept, the diversity of costs for the diversity of the universe of the handicapped children, because of the different handicaps, school systems would develop some costs.

You would do it if the money were at the other end of the pipeline. In fact, you have already done it without any Federal program to encourage you to do so.

Mr. SMITH. Right.

Mr. BRADEMAs. I want to study with great care how you went about it.

Mr. SMITH. If we can be of further help, we will be more than happy to have a man come out and consult with your staff.

Mr. BRADEMAs. We will rely on the good offices of Mr. Bell and Mr. Miller to do that.

Mr. BELL. Thank you, Mr. Chairman.

If new Federal dollars were made available to you in the city of San Diego to serve handicapped children, how would you spend them?

Mr. SMITH. No. 1, I think I mentioned in my statement, Congressman Bell, some of the programs that we are just going to enter into on a pilot basis. For example, our homebound telephone hookup program, and this year, because hopefully of a Federal grant, we can expand this to a greater service for the youngster, who because of many different reasons, cannot attend school.

We would beef-up the programs that we have, plus the fact, as you know in California with the citizens' attitude the way it is to avoid any more taxes, most of the school districts are facing a deficit. We feel that we could be relieved somewhat through Federal legislation that would provide dollars to us.

As you look at my sheet here, telling you about how much of the local tax dollar goes into these particular programs, money that really could be used to help the rest of the programs in the school districts, that would help all 126,000 students rather than those handicapped categories.

Mr. BELL. I take it then that you obviously need more money.

Mr. SMITH. Right.

Mr. BELL. Can you put a figure on that?

Mr. SMITH. I could try to do that, sir. I will go back, and in working with our staff, submit this to you.

Mr. BELL. If you received more money, where would your priorities be?

Mr. SMITH. My priorities would be probably in the mentally retarded as well as the homebound and blind students. The program that I spoke about, where the instructor who developed this program has been invited to go to Europe, but I wish that he could come here and give you a demonstration of what he has done with these blind youngsters, making them completely functionable in a society as complex as ours.

However, it is on a limited basis, and in a city the size of San Diego, we have a number of blind students, and we would like to see this beefed up.

I am not a program expert, as you know, but there are many other programs, for example, in the area of the transportation of the handicapped. Transportation anywhere today is a major cost, and we have taken from our local budget money to transport the orthopedically handicapped youngsters, the mentally retarded youngsters to the source of their education services. All of these areas require lots of money, and when you get into contracts with the bus company, et cetera it really eats up the dollars.

Mr. BELL. Do you have any idea, Mr. Smith, as to how much money would be needed for a good handicapped program in the State of California?

Mr. SMITH. Let me say, No. 1, we have a figure of about \$1,100 that we spend on each student. I would say that you would need at least half that much money again to really do what you should do for these students.

Mr. BELL. Thank you, Mr. Chairman.

Mr. BRADEMAS. Mr. Cornell.

Mr. CORNELL. I notice, Mr. Smith, that you mention the total district contribution to the school fund for the maintenance of pro-

grams of about \$3 million. Do you feel that your regular school program has suffered as a consequence of having to take \$3 million from regular education?

Mr. SMITH. I must say that I, as a school board member, it has had to suffer. If you would give us that money, we could do a very good job. It would not just go into teachers' salaries.

To answer your question, and to be truthful, I would have to say yes.

Mr. CORNELL. I know that it is a little difficult to respond to such a question. I did notice that for your homebound program, 61 percent of funds come from your general funds, and for speech and hearing 52 percent. It appeared to me that it is a sizable amount that you are using to finance these programs.

There is one other thing. I think that you gave the figure of \$1,100 per child.

Mr. SMITH. Right.

Mr. CORNELL. I was interested to notice that this is for every child, 126,000 that you have in your congressional district, and the average is about \$1,100. So, it is considerably more for the special programs.

Mr. SMITH. Considerably more. Let us go back once again to our gifted program. The State gives us \$31 per pupil for the gifted program, but we put a lot more money than that, as you can see from our statement here. I think that last year we put a little more than \$1 million into our gifted program.

Mr. CORNELL. I was struck by the fact that you have a special State allowance of \$2,150 for the speech and hearing whereas the actual excess costs are \$4,519. So that money is coming from your general education budget?

Mr. SMITH. Right.

Mr. CORNELL. It would be helpful if you had Federal aid?

Mr. SMITH. Right.

Mr. CORNELL. You are receiving some Federal aid at the present time.

Mr. SMITH. A small amount, that is true in these categories.

Mr. CORNELL. Thank you, Mr. Chairman.

Mr. BRADEMAs. Mr. Jeffords?

Mr. JEFFORDS. Thank you, Mr. Chairman.

I understand that the Supreme Court of California passed a decision which put the burden on the state to provide equal opportunity in education some years ago. I wonder if that had anything to do with the development of the California programs for the handicapped?

Mr. SMITH. I don't think it had. We had the programs way before. The State legislature is just beginning to move to trying to do something about these decisions that were made. We have a bill before Congress now, which Congressman Miller would know about, that would go toward doing what the courts said that the State has to do. It does not have a chance of passing this year. They will not do anything until the time of limitation runs out, which I think is 1977, or something like that.

Mr. JEFFORDS. Thank you.

With respect to the figures that you have given to us as to the cost of the special programs, I wonder if they are rather gross figures. I

wonder if you could supply us at some time with a breakdown of the cost figures within those programs? In other words, how you arrive at the cost figures that you have on there?

Mr. SMITH. I don't know if the Congressman was here when I talked about the analysis of these various programs.

Mr. JEFFORDS. I am referring to the page that gives the various large figures. I would like to see them detailed.

Mr. SMITH. I will get them for you. I am going back this afternoon, and I can tell you that tomorrow morning the staff will be working on this, and I will get them in to you.

[Information requested follows.]

Question 1. How are the cost figures developed for special education programs?

The San Diego Unified School District is on almost completely a program budgeting system. Under this system the costs for special education programs and the specific incomes attached to these costs are placed in separate fund codes so that there is no mingling of general education funds in either the appropriation or income estimates. The cost figures which are used in developing excess costs include positions (teachers, resource teachers, etc.) which are assigned specifically full-time in the program in question. The personnel costs of these people directly assigned to work on a day-to-day basis in the classroom or teaching program are included as direct costs along with supplies specifically charged to the special education program, and equipment and capital outlay charges for equipment used only for the benefit of these pupils.

In addition there are other support costs which are directly attributable to the program. These are prorated on an actual workload basis. The best example of this would be that, since psychological examinations are required for placement in almost all of the special education programs, a record is kept of the actual number of cases examined by the school psychologist for purposes of eligibility determination in a particular program. The percent of their workload is applied to the psychologist's payroll figure and the resulting amount is allocated as an appropriation against that special education program.

In summary, then, the total program costs consist of teachers, supply and equipment items which are used in the classroom, along with that exact proportion of other personnel and costs which can be directly identified with the program in question following standard cost accounting practices.

On the income determination, separate components of income are developed as they are applied to the program. The first of these is the direct cost of general education which is that share of the general education funding which is attributable to the pupils in special education classes on an a.d.a. basis in the same way that this general education income is attributed to the costs of any other program. The second component is the State special apportionment income. In almost all cases this is calculated by the a.d.a. in the special education program in question. The State Education Code specifies different allowances per a.d.a. unit for the different programs. These vary considerably from program to program principally as a function of required class sizes. Class size is a major determinant of cost, obviously, since many of these classes are limited to six pupils or less for a full-time teacher. Often an aide is specified as well. It may be seen that there is no opportunity to minimize the cost of these programs by larger classes since the State Education Code prescribes a maximum class size for each program.

The third income component is the district contribution from non-categorical funds. This represents essentially the difference between the actual program direct costs and the amounts of income received from attributed general education funding plus special apportionment. The percentage of district non-categorical support varies from program to program depending upon the special appropriation allocations and other factors. Under the present funding system in the State of California this non-categorical fund difference must come from the district's general education funds, and in a sense represents the depletion of funding available for the general education program.

Question 2. What are the criteria used in determining the various categories of exceptional children?

There are different types of determination utilized in determining the categories of handicap for special education purposes. The criteria for each of these is specified generally in the California Education Code and in much more detail in Section

D, of the California Administrative Code, Title V. Section 6750 of the California Education Code in regard to educationally handicapped pupils reads as follows: "As used in this chapter educationally handicapped pupils are pupils who are under the age of 21 years, who by reason of marked learning or behavior disorder, or both, cannot benefit from the regular education program, and who as a result require the special education programs authorized by this chapter. Such learning or behavior disorders shall be associated with a neurological handicap or emotional disturbance, and shall not be attributable to mental retardation."

Generally, in all types of handicap the Administrative Code specifies an admission review and discharge committee which generally consists of a nurse or physician as relevant, a psychologist who is ordinarily the psychologist who has examined the pupil, a special education teacher and an administrator of special education. Admission of all children to all of these programs is reviewed by such a committee, and they are only admitted upon parental request and committee recommendation.

The annual review, or more often than annual review upon occasion, of pupils' progress is made by a similar committee, and discharge of the child from a special education program to return to the regular education program is planned by this committee as well.

In the case of educable mentally retarded a similar committee structure is used but tests for criteria are also prescribed in the law. At the present time the law states it is essential that a child, to be considered for admission to a program for educable mentally retarded, must score two standard deviations below the mean of a specified individual intelligence test, with an allowance for the standard error of measurement. However, because of litigation the State Department of Education has, at least temporarily, issued instructions that individual psychological examinations should not be considered in the placement of educable mentally retarded pupils.

The review conducted by the Admission and Discharge Committee is required to include consideration of psychological and medical data as well as evaluations of educational achievement level, and general adaptability. There are some school district options in the use of various adaptability scales, but the general intent of these is to determine whether functionally the child is actually handicapped sufficiently so as to need special education.

The remaining critical special education programs such as programs for aphasic, speech and hearing programs, visually handicapped, orthopedically handicapped, pregnant minors, teaching of homebound, deaf and hard of hearing, and trainable mentally retarded all follow the use of standard clinical criteria for these conditions as reviewed by the Admissions and Discharge Committees. In certain of these the medical findings obviously would overbalance the data even though the other data are considered. An example of this would be the teaching of homebound where a physician's recommendation is required for the program to be offered.

In the case of sensory handicapped children the Admissions Committee almost invariably has not only medical data available, but these data include specialized medical data from such specialists as otologists and ophthalmologists.

Transportation of handicapped is required by California Education Code for children falling into various education programs. At the present time the State law does not require that a district furnish transportation for educationally handicapped or educably mentally retarded or speech and hearing handicapped children. Obviously transportation is inapplicable to the instruction of homebound. In the case of speech and hearing the teachers used are itinerant speech teachers who provide instruction at the school where the child attends. At the present time San Diego Unified School District is providing transportation for educable mentally retarded pupils completely at district expense because this is necessary in order to provide services to children needing them. The classes are regional in nature because of the proportionally small population involved. Without transportation many of these children could not avail themselves of the program.

Mr. JEFFORDS. I think that this will really be helpful to us.

You are referring in your testimony to some 10,000 handicapped students, and I think you testified that, to your knowledge, all of the handicapped receive training in San Diego; is that correct?

Mr. SMITH. Right, some degree of training.

Mr. JEFFORDS. When you say that are you saying that someone has determined that all of them are capable of being educated?

Mr. SMITH. We follow the premise that there is no person who is not educable. For example, some youngsters, I can recall, were unable to communicate at all, and we are bringing them to the point where they are learning to communicate.

So, we don't look upon anyone as being uneducable. We feel that with the proper program, and the proper action, everyone can be taught something.

Mr. JEFFORDS. So "homebound," as I believe you refer to them, takes into account all of the children that are presently at home, and that you can assist in some way, and that you, in fact, assist in some way?

Mr. SMITH. That is right. Maybe it is the youngster, who, because of an illness, cannot come to school, he has been in a car accident.

Mr. JEFFORDS. What kind of an outreach program do you have that goes out and attempts to try and locate, and identify, such children?

Mr. SMITH. We have, first of all, our parent counselors. We have our district counselors. These are people who work out of the local schools, and the local community, and the basic community. They know these students who are not in school.

I will tell you this. If the parent has a handicapped youngster, handicapped in any way, he lets the school know. We don't have to sit back and wait. I must say that I wish that the interest was throughout the school districts.

Mr. JEFFORDS. You are confident, then, that this outreach program you have has located, as far as you know, all of the students, or just about every possible child with these experiences?

Mr. SMITH. For as many years as I have had on the school Board, we have had a basic interest in these children. We are not going to take over the administration of the school district, but we want programs that meet the needs of the students.

When those needs are identified to us, we try to respond to as many as we can.

Mr. JEFFORDS. Thank you. This is all I have, Mr. Chairman.

Mr. BRADENAS. Mr. Miller?

Mr. MILLER. Mr. Smith, what has been the increase in the educationally handicapped in the last 5 years?

Mr. SMITH. I would say 75 percent, because many of these things, for example, those who have been unable to communicate, that program is only 2 years old. It is a matter of identifying special needs.

As you can see on this sheet here, there are many school district programs that we have in many categories, especially handicapped youngsters. I think that number one the key to it is the staff in your school district. Their attitude toward handicapped youngsters, their identification of students who have a particular need.

They develop a program, and they bring it to the board. Then, we act upon it. Then it is enacted. I would say that over the years, over the last 10 years, there must have been at least 75-percent increase on our services to the handicapped youngsters.

Mr. MILLER. What has been the increase in the category that might be called "emotionally disturbed"?

Mr. SMITH. I guess that this is probably our highest. It was the highest when I went on the board. The State legislature, I thought, really

dealt us a blow in that we had passed legislation that prohibited identifying many of our students that psychologists felt fit into the category. The legislation ordered them back into the normal classroom setting, which I don't think is the best thing.

Mr. MILLER. What have you done with the students since then?

Mr. SMITH. Many of them we have in what we call a transitional program. We work with them on an individual basis, and try to bring them to the point where we can feed them back into the regular school program in order to meet the state requirements.

There are others that are giving problems in the traditional education classes, and that was part of that legislation.

Mr. MILLER. What do you do with the children that don't go back in the mainstream, who can't make the adjustment?

Mr. SMITH. We have continuation type schools. We have recently developed a career development center that provides work experiences for some of these youngsters, trying to take care of their basic needs.

Mr. MILLER. Do you know what the ratio is of those youngsters, for our purpose of discussion now, who are emotionally disturbed in terms of minority students?

Mr. SMITH. Let us say, for example, approximately about 35 to 40 percent would be minority students. We have two basic minority groups, black and brown. I think that this probably would be double the majority group, as the majority group makes up about 70-percent of the entire student body.

Mr. MILLER. How do they breakdown along sex lines?

Mr. SMITH. I have no way of knowing. Probably they have more boys than girls. I don't know for sure, but that would be my feeling.

Mr. MILLER. In terms of State assistance, which we provide in California, do you lose funding for those students, now that you have been forced by State law not to identify them?

Mr. SMITH. That is right. The state is noted for passing legislation without competent money.

Mr. MILLER. Thank you.

Mr. BRADEMAs. Thank you very much, Mr. Smith. Let me ask you another question.

Suppose that we were to pass this excess cost bill, for example, what would your reaction be, if we said that in the local school system you had to give priority in the expenditure of any Federal funds to the most severely handicapped children? Would that be a new problem for you?

Mr. SMITH. No it would not. I always believe that the dollars should be spent where they are needed most, and the most severely handicapped would be those that would need it the most. They are the ones who required more specialized training on the part of staff, et cetera.

Mr. BRADEMAs. Thank you for a very interesting statement, Mr. Smith.

Mr. JEFFORDS. Can you tell me what criteria you used for defining the various categories? Are there state established criteria to determine who is educationally mentally retarded?

Mr. SMITH. Yes. Then within the districts you set up your own basis for determining, just as long as they are within the State guidelines. So the state sets them up, but there is flexibility.

For example, I don't mean to play up the gifted program, but the State sets a certain IQ, which I think is 132. We, for example, take that to 152 in San Diego. As long as we are not violating State law, we feel that we should have the flexibility.

Mr. JEFFORDS. Could you furnish us with a copy of the criteria which you use, both the San Diego criteria and the State criteria.

Mr. SMITH. Right, we will do it.

Mr. BRADEMAs. I want to thank you again, Mr. Smith. Your testimony is very encouraging about what you are doing in San Diego. I take it from what you have said that you would be in great shape to resist a law suit, if any parents of handicapped children should say that their children were not being adequately taken care of.

Mr. SMITH. I would guarantee you that the judge would not render the decision that he rendered in the District of Columbia.

Mr. BRADEMAs. Mr. Steinhilber, do you wish to be heard?

Mr. STEINHILBER. I would wish to submit my statement for the record, and give a few extemporaneous remarks. I am sure you have enough reading.

Mr. BRADEMAs. Your statement will be made part of the record.

[Statement follows:]

PREPARED STATEMENT OF AUGUST W. STEINHILBER

Mr. Chairman, my name is August W. Steinhilber, and I am the Assistant Executive Director for Federal Relations of the National School Boards Association. I am accompanied today by Michael A. Resnick, Legislative Specialist of the Association.

The National School Boards Association is the only major education organization representing school board members—who are in some areas called school trustees. Throughout the nation, approximately 80,000 of these individuals are Association members. These people, in turn, are responsible for the education of more than 95 percent of all the nation's public school children.

Currently marking its thirty-fifth year of service, NSBA is a federation of state school boards associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Most of these school board members, are elected public officials, accordingly, they are politically accountable to their constituents for both educational policy and fiscal management. As lay unsalaried individuals, school board members are in a rather unique position of being able to judge federal, state and local relationships, such as the "Education for All Handicapped Children Act," purely from the standpoint of public education, without consideration to their personal professional interest.

The National School Boards Association fully supports the concept of federal funding for the purpose of assuring that all handicapped children will receive an opportunity for a meaningful public education.

A. BACKGROUND/RECOGNITION OF NEED

At the outset Mr. Chairman, we wish to express our appreciation to you and the members of the Subcommittee for moving expeditiously in your consideration of this legislation. As we all know, more than 10% of our school-aged population is afflicted with some form of handicap which can impede their educational attainment—and, ultimately detract from the fulfillment of their adult lives. Of these 7 million children, about 1 million do not have access to any special education programs. Unfortunately, these are frequently the very children who are most in need of such services.

From the standpoint of parents, the time for action is today—as understandably evidenced by law suits filed in over twenty states which allege that school systems are denying their children equal protection under the laws. In this regard, it is the goal of the nation's local school boards to provide each handicapped child with access to that education program which best suits his needs. Unfortunately, the

amount of additional funds required to achieve that goal are estimated to be in excess of \$3 billion. As staggering as this amount might seem, the financial problem reaches even fuller dimensions when placed within the context of the struggle which school districts are undergoing to maintain current service levels. Specifically, a 30% compounded rate of inflation over the past three years has eroded all services, future employee cost of living requirements will have to be met, as well as increased energy costs—all at a time when state and local revenues are falling or are being diverted by the effects of recession and unemployment.

The point is, Mr. Chairman, as desirous as local school districts are to meet the high cost needs of handicapped children, funds from local resources are not sufficient. Restated, unless the federal government is willing to underwrite a substantial portion of the cost, the need will continue to be unmet or at best only partially fulfilled—and then only at the expense of some other groups of children.

In urging the Subcommittee to support a large scale financial commitment for the education of these children, we recognize that you will be in direct conflict with the position taken by the Administration last year. At that time, the Administration argued that the federal role should continue to be one of capacity building rather than one of general support. That argument was buttressed by the assertion that existing state surpluses and General Revenue Sharing could adequately finance the education of all handicapped children. On both counts it should be recognized that there are only a limited number of social needs to which those funds can be apportioned. Since last year, those state surpluses have vanished, if indeed they ever existed other than as bookkeeping entries. Similarly, in practice, General Revenue Sharing, which does not provide direct aid to local school districts, has only yielded about \$300 million per annum (i.e., 5% of General Revenue Sharing) for new elementary and secondary services.¹ Accordingly, we suggest that the financial basis underlying the Administration's position favoring a limited federal involvement cannot be supported.

B. POSITION ON S. 6

Hence, if a federal program of general support for handicapped children is a financial necessity, the question raised is what is the best way of translating that aid into services?

The National School Boards Association believes that S. 6, as originally drafted, has served the valuable purpose of focusing national attention on the needs for a massive infusion of federal dollars. However, we have withheld support with regard to certain of the program specifications—especially those relating to the funds distribution formula, the method for developing program design, and some of the accountability procedures. Instead of restating our technical critique of S. 6, we have appended a segment of our testimony of last year to the prepared text. To move in a more positive direction, the balance of our statement is devoted to advancing those program components which we believe would make for a more workable bill at the local level.

C. SUGGESTED MODIFICATIONS TO S. 6

By way of prelude to our recommendations, recently, several of the nationally based organizations met to discuss this legislation. A staff memorandum representing some of the areas of agreement and disagreement have been attached to our statement for your consideration.

In presenting the program elements supported by the National School Boards Association, I will be relating to the commitments which our organization made in that memorandum.

FORMULA ENTITLEMENT

It is our view that a program which could involve an expenditure of \$3 billion per year must distribute federal funds on a local formula entitlement basis—as opposed to a discretionary project grant basis. That is, the program is too comprehensive for allocations to be determined by federal or state discretionary project grant awards. Hence, as in the case of Title I of the Elementary and Secondary

¹ To underscore that point from a slightly different perspective, an Administration statement that 65% of the states' share of General Revenue Sharing is expended on education (including elementary and secondary, higher education, manpower training, school tax relief), clouds the overall picture of the 5% which is spent from the total program on new elementary and secondary education services.

Education Act, or the Impact Aid program, funds should be distributed to local school districts, according to the number of target children residing in each local area.

Our rationale for pegging the funds to the child is based on certainty. If the federal level is going to be a major source of funding for these children, a local school district will need to have a basic idea as to how much funding it is going to receive from year to year—especially if plans must be developed on an individualized basis. Furthermore, the local entitlement approach ensures that the amount which any school district receives will bear some relationship to the cost of educating the children involved. Finally, local entitlement provides school districts with the kind of certainty which is vital to their overall governance responsibilities. Specifically, if a state under the project grant approach changes its funding pattern, a local school district may find itself subject to court order for noncompliance, and perhaps subject to a termination of all federal funds because it could not manage a timely budget alteration to offset a sharp reduction in project grant funding.

If local entitlement is adopted, the formula used can easily be weighted to accommodate for any number of factors such as effort, excess cost, or average income. In this regard, since children will have to be classified in order to provide them with the appropriate service, those classifications can likewise be weighted to allocate funds—especially since the cost of serving certain classifications of handicapped children will vary markedly with the cost of education of others.

In urging a local formula entitlement approach, three related comments need to be made. First, while forward funding would further alleviate our concern with certainty, forward funding without local entitlement is not the answer—especially since the Appropriations Committee is not obligated to fund in that manner. Similarly, even if there is forward funding under the project grant approach, a particular state would not be required to conform its fund distribution plans to the local budget cycle.

Second, as in the case of Title I, school districts should be held accountable by requiring adherence to the specifications of a general state plan. We would go a step further and urge that school districts should also be held accountable to parents as well by requiring that individualized plans be developed in discussions with parents, with enforcement through the procedures of section 613(a)(13) of the Education of the Handicapped Act. Indeed, especially since the children involved are highly individualized, the notion of local school district flexibility within a general state plan concept would seem a most desirable balance of the state, local, and parental interests.

Third, if the Committee adopts a local entitlement approach, provision must be made for both state administration and state operated programs. State administration should be funded along the percentage suggested in ESEA Title I. Similarly, state operated programs should be funded as a separate program or title. In this regard, one problem with ESEA Title I is that state operated programs are fully funded "off-the-top" with the remainder of the appropriations then distributed to local school districts. The result is that equally deserving children can have a better program by the happenstance of being enrolled in a state institution—regardless of the relative wealth or effort of the local agency vis-a-vis the state agency. In our view, the separate program approach for state operated programs produces equity for the children and forces the states to be more accountable for their own expenditures.

2. Program Design.—In supporting the notion that individualized plans should be developed with parents, NSBA opposes the notion that such plans must be 1) mutually agreed upon, 2) or that once developed such plans take on the character of a contract, the performance of which is enforceable in court. As highlighted in the appended memorandum and detailed in the accompanying testimony, state and local units should not be forced into a two party agreement, because, in addition to serving the parents involved, school officials also have a separate legal obligation to make decisions about children and the overall management of the school systems. Furthermore, to the extent that plans must be mutually agreed upon, both the planning process and flexibility in its aftermath will be unnecessarily constrained. More importantly, at some point "mutual agreement" relieves school officials of being accountable for the overall quality of their "negotiated" programs.

Although S. 6 did not create a right of court ordered specific enforcement of mutually agreed upon plans, a passing comment should be made. If an agreement is brought to court for specific enforcement, an action at equity is involved which

then requires a judge to balance and evaluate the substance of the education program at issue. This raises certain questions of judicial expertise and separation of powers. Furthermore, as a matter of "equal protection" the question is raised as to which parents of the other classes of our nation's 50 million school children should be entitled to specific enforcement of individualized plans.

In taking this position against treating individualized plans as two party agreements or as specifically enforceable contracts, we hasten to reiterate that parental consultation during both the planning and implementation stages is vital. Furthermore, a mechanism should exist to ensure that local school districts and state agencies are in compliance with requirements of the federal program.

3. Accountability.—In urging an accountability process, it would appear that two objectives need to be served: 1) to ensure that all handicapped children who are eligible to participate are actually given access to a program, and 2) to ensure that programs sufficiently fulfill the particular needs of the student.

With respect to the first objective, "access", the National School Boards Association believes that all handicapped children should have access to a public education. (However, where medically inadvisable, the child should not be compelled to pursue that access.)

In order to ensure that access is not improperly denied to these children, we urge that the legislation confer upon HEW's Office of Civil Rights (OCR) the appropriate compliance authority. If after seeking voluntary compliance, and, in turn stronger measures, a child is still denied access, a termination of all Office of Education funding may have to be OCR's ultimate step. However, if OCR is given the latter power, we urge that the legislative history should require federal officials to consider the budgetary difficulties that sharp and untimely reductions in federal funds may pose at the local level—especially since the federal dollar may very well be the principal revenue source for these programs. Similarly, given the tooling up problems which are bound to occur in the first year of the federal program, we urge that OCR should not be permitted to terminate funding for breeches occurring during a school district's first year under the federal program.

4. Interim Measures.—In the event a comprehensive law cannot be enacted in the immediate future, the question is raised whether federal aid for handicapped children should be limited to existing programs, or whether an interim emergency expansion, such as the since lapsed "Mathias Amendment" should be enacted?

Although an emergency provision would yield more aid than what is permissible under current law, there would still be a shortfall in meeting the legislative program and financial needs which we have described today. That is, an interim measure means less than full substantive quality and that many children will continue to be unserved. Hence, while an interim measure is preferable to the limitations of the existing law, we hope that the legislative process permits immediate consideration of a more comprehensive measure.

CONCLUSION

In conclusion, the unmet educational needs of the nation's handicapped children, which will cost at least \$3 billion per annum, cannot be financed unless there is a major commitment by the federal government. Although the S. 6 model is an important step forward, NSBA has withheld its support for the bill because we believe that 1) funds must be allocated on a local entitlement basis (regardless of which formula weighting factors are selected—i.e., income, excess cost, et cetera), 2) while parental participation in individualized program design is essential, the bill, by requiring "mutual agreement" on plans, overreaches the prerequisites of that participation to a point where the responsibilities of local school districts to the public and to the children in question would be compromised, and 3) that with the compliance requirements suggested by NSBA, the Office of Civil Rights should enforce matters relating to access, whereas the review system provided under section 613(a)(13) of the Education of the Handicapped Act should apply to more substance questions.

Mr. Chairman, on behalf of the National School Boards Association, I wish to thank you for this opportunity to testify.

APPENDIX A.—SEGMENT OF THE NATIONAL SCHOOL BOARDS ASSOCIATION'S
1974 STATEMENT ON S. 6

FUNDING ON THE BASIS OF LOCAL ENTITLEMENT NOT STATE ALLOTMENT

Section 8(a)(2) of the bill provides that the "state educational agency shall distribute to each local educational agency of the state the amount for which its application has been approved. . . ." Section 6(c) partially limits the states from having open ended discretion in determining the distribution of federal funds. Specifically, it requires that the states distribute funds in a manner which will "reflect" the relative expenditures made within the state "by state and local agencies." At the same time, the distribution must be made "on the basis of consideration of" relative geographical need and relative need within subgroups. However, upon closer examination these distribution standards are not precise and are somewhat inconsistent (i.e., effort versus need). In terms of effort, it is not clear whether the standards are limited to state effort versus total local effort (for determining total local grants) or whether "consideration" must also be given for the effort of one local agency in relation to all local agencies (for determining each local grant from the total amount available for local grants).

Given the fact that the level of full funding of the program may exceed \$3 billion, the state agency should be required to distribute said funds pursuant to a congressionally determined local formula entitlement rather than the fairly open distribution plan currently appearing in S. 6. In short, a distinction should be made between the power of the state to approve the merits of a local plan and the power of the state to determine the dollar level as well.

But even with respect to the development and operation of the state plan, the program would probably be more effective if the state's role was more in the nature of a program coordinator than an initiator of local program requirements. This view can be supported on several grounds. First, if indeed the local educational agency must work out individualized programs with parents and provide due process hearings in cases of disagreement, it should also have the flexibility to make final program decisions.

As currently drafted, S. 6 invites impasse with parents to the extent that local boards would only serve as an intermediary to pass messages of disagreement between parents and the state agency. But more fundamentally, unless the local program is objectionable for good cause, there would appear to be questionable value to empowering the state agency to reverse approaches developed "on-the-scene" just to operate the program "its way". That is, the local level understands how a particular program fits into the total management of its school's operation and how it can best serve the needs of the local community. Since the bill may, in effect, actually require that states compel local school boards to apply for assistance in order to meet its section 6(a)(1) assurance that all handicapped children will be given a free public education, local boards should not be forced to lose their autonomy in order to build the handicapped program into existing operations (i.e., existing operations for handicapped children as well as the total school operation.) It should be noted that if a local agency wishes to avoid state imposed regulation and can afford to finance its handicapped program solely from local funds, that local effort will yield the state level three times the amount in federal funds for redistribution to other school districts. In short, NSBA must oppose the power-leverage which S. 6 places at the disposal of the states.

In urging that S. 6 be drafted in the nature of a local formula entitlement program, per pupil payment rates should vary with the educational cost associated with the various subclasses of handicap. Since the bill already requires that these statistics be maintained for the purpose of determining state allotments, the total paperwork would not vary significantly from the current draft. As in the case of ESEA Title I, the federal government's largest education program, the targeted children would simply be counted and an application for payment would be submitted to the federal level.

LEGAL RESPONSIBILITY OF LOCAL SCHOOL BOARDS

Section 6(a)(4) of the bill provides that the local educational agency must maintain annually updated, individualized written programs which are "developed and agreed upon" (see definition 9 under section 3) with parents and that disagreements thereon shall be subject to impartial due process hearings. In addition to these provisions regarding individualized programs, section 6(a)(6) requires that

due process hearings shall be afforded to determine changes in the educational placement of children and that independent educational evaluations shall be obtained for parents on request.

Although these provisions may have a certain emotional appeal, they also pose a serious interference with the operation and authority of the local educational agency.

Legally, the local educational agency is charged with the ultimate responsibility for educational policy within the community. Accordingly, any decision requiring the joint concurrence of parents in devising an "educational plan" (see definition 9) is automatically at variance with that responsibility.² In this regard, while consultation with the parents of special children is important, we do not believe that parental agreement should be required just because a child happens to be handicapped. Or restated, should the existence of a handicap create a right on the part of parents to determine the educational program for their children—especially in cases where the handicap bears no relationship to either the academic capabilities of the child or to most aspects of the student's total educational program? Or even if such a relationship does exist, are school authorities less able to make final education decisions for these children (as opposed to joint decisions) than they are for culturally disadvantaged, bilingual, or any other group of children? There is a serious question whether joint decisionmaking regarding programs for handicapped children opens an equal protection argument to all other children that the educational element of their program should be individualized, as well as subject to joint development and agreement with parents.

Also, by requiring educational plans to be developed pursuant to joint "agreement" with parents, there is at least an implication that the parents on behalf of their children have a contractual right. Unless that implication is negated parents may then be inclined to seek the precise execution of their "agreements" in court—regardless of the educational and overriding policy considerations of the local educational agencies to modify same. The potential cost and confusion associated with parental enforcement of seven million such contracts would result in total chaos for both the courts and public education systems if the extension of the parental "agreement" to handicapped children necessitated that the same rights be granted to the 43 million other children in the public school system. In this regard, it should be underscored that the House/Senate conferees in their recent work on S. 1539 solidly rejected an amendment to the General Education Provisions Act which would have placed similar contractual rights within the powers of the U.S. Commissioner of Education.

APPENDIX B.—MEMORANDUM

APRIL 1, 1975.

To: Ray Peterson, Council of Chief State School Officers; Fred Weintraub, Council for Exceptional Children.³

From: Mike Resnick, National School Boards Association.

Subject: Forthcoming Handicapped Legislation.

This memorandum summarizes my understanding of the conversation which took place among ourselves (and Joe Ballard, Council for Exceptional Children) on March 21.

1. Formula.—Although various approaches were discussed (e.g., state incentive based on children involved in programs, excess costs, income factors, et cetera), an effort was not made to reach any agreement. Related issues such as the need to identify students and to weight entitlements according to class of handicap were discussed without commitment.

2. Local Entitlement.—The point was made that for a program which would involve a per annum appropriations of \$3 billion, school districts should have certainty as to the amount of funds which they can expect to receive from year to year. This concern was reinforced by the fact that once a school district becomes dependent upon a program of this size, changes in the intra-state allocation of

² In speaking of educational responsibility, we are including the local board's governmental responsibility to the community at large, as well as to the individual students who are served. Educational policy decisions must frequently take into account such factors as unemployment, the local economy and other trends which relate to the tax base and future community support. These legitimate governmental concerns cannot be given their proper due if programs must be developed on a joint two-party basis with parents.

³ After reviewing this memorandum, James R. Kirkpatrick of the American Association of School Administrators, indicated that AASA's position parallels that of the National School Boards Association's on all five points.

funds could result in school districts losing all federal funds for failing to meet compliance requirements. Accordingly, the Council for Exceptional Children and the National School Boards Association agreed that the handicapped program should allocate funds on a local entitlement basis—i.e., in a manner paralleling ESEA Title I. In this latter regard, it was also agreed that local school districts must use the funds in a manner which is consistent with the overall state plan. The Council of Chief State School Officers have alternative approaches under consideration.

The point was raised that in some instances, there may not be a sufficient number of children who could be placed together in order to operate an adequate program. Hence, it was agreed by the Council for Exceptional Children and the National School Boards Association that local school districts who could not meet minimum state plan requirements due to a lack of overall dollars should have an option (subject to state plan requirements) to operate on a joint basis or to enroll exceptional children in a state operated regional program. With regard to the regional approach, it was further agreed that for the purposes of the fund allocation formula, the funds should continue to follow the child on a local formula entitlement basis.

3. Program Design.—It was agreed that the state plan should set forth general criteria. For the most part, actual program design would be developed between the local educational agency and the parent. In this latter regard, for purposes outlined in the paragraph on compliance, it was agreed that programs must be designed as a result of discussions between the LEA and parents, as opposed to being *mutually agreed upon* between the two.

4. Compliance.—Compliance was discussed as a two part issue: a) whether all handicapped children should have access to an education, and b) the mechanism by which educational agencies would be held accountable for fulfilling individualized programs.

A. Access.—The point was raised that, regardless of the nature of the handicap, a child would not be denied access to an education. The qualifying point was made that once access is granted, the substance of the program must take into consideration the cost and expectations associated with each child. Hence, it was agreed that all children should have access to an education. It was also agreed, in recognition that it is not currently possible to give each child all the services needed, that at least a minimum education program should be provided.

B. Accountability.—The accountability of educational agencies was discussed in two parts: a) access to an opportunity, and b) adherence to program format. On the question of access, the Council for Exceptional Children and the Chief State School Officers indicated a preference for enforcement at the state level, whereas the National School Boards Association preferred enforcement through the Office of Civil Rights.

The Council for Exceptional Children noted that the use of the judicial system can be an effective enforcement tool, and expressed concern that the Office of Civil Rights might be too understaffed to produce the same level of effectiveness. The Council of Chief State School Officers raised the point that there should be some internal appeal system within the education system prior to involving judicial action. Both agreed that a state compliance commission could do the job. The National School Boards Association raised the point that in dealing with a federal law, the federal level best understands the intent and can assure uniformity of standards through the nation. In addition, the National School Boards Association was concerned that unless the compliance office was separate from the program office (either federal or state depending on how the law is drafted), there may be a tendency by the program office to informally turn to unintended means of seeking compliance (e.g., a slow-down in releasing funds).

The point was made that a termination of all Office of Education federal funding should be the ultimate means for assuring compliance with access requirements. The qualifying point was made that in recommending as drastic a step as a total cut off of funds, recognition should be given to the fact that federal funding in a given year may not be sufficient to provide access to all children. Furthermore, there may be tooling up problems in the first year which could result in a denial of access for some students. Hence, NSBA recommended that a minimum federal appropriations should be required to trigger the fund cut-off provision in any given year. An agreement reached was that there would not be an access compliance procedure in the first year the program is funded. It was also agreed that further discussion of access compliance procedures would be required.

With respect to accountability for the substance of programs, the point was made that parents should have a compliance mechanism since programs would be operated on an individualized basis. The qualifying point was raised that individualized plans do not suggest a contractual relationship between parents and the LEA, and therefore specific enforcement or similar court remedies were inappropriate.

After some discussion of accountability, the overall nature of state and local government, effect of extending similar remedies to other classes of children, and the intentional rejection of specific enforcement language by House/Senate conferees during deliberation of P.L. 93-380, an agreement was reached. That is, local school districts should be held accountable through existing third party administrative oversight procedures, i.e., the Stafford Amendment. However, in order for programs to fit into the governance framework they should be developed in consultation with parents as distinguished from a contract or agreement. Hence, to avoid giving an improper impression, it was agreed that terminology such as "mutual agreement" was inappropriate. In addition, it was agreed that specific performance was an inappropriate enforcement mechanism.

5. Single System.—The point was raised that in the case of institutionalized handicapped children, the state or local educational agency, as the case may be, should bear the responsibility for educating all such children. It was agreed that in fulfilling their responsibility to provide the educational component in the care of such children, the educational agency should be permitted to contract for the required services.

STATEMENT OF AUGUST W. STEINHILBER, ASSISTANT EXECUTIVE DIRECTOR, OFFICE OF FEDERAL RELATIONS, NATIONAL SCHOOL BOARDS ASSOCIATION

Mr. STEINHILBER. First of all, I do believe, I know what the House Budget Committee is doing, and I know what the Senate Budget Committee is doing. I am fully aware of the problems of the economy. Nevertheless, I feel somewhat constrained to say that while there will be a package amendment on the HEW appropriation next Tuesday or Wednesday, there will only be \$10 million in that package for the education of the handicapped, because we have literally come to the ceiling in authorizing amounts on that particular program.

I think that we have now really come to that kind of a state where I really believe that a major breakthrough can take place in the U.S. Congress in terms of funds for the handicapped.

I think that this breakthrough is taking place because of a number of things which have taken place, whether we call it H.R. 70, or Public Law 93-380.

I would like to point out that what has happened since that time. Supposedly the special educators, and I don't like to use that term really, and those of us who have a broader responsibility for general public education have been meeting on a regular basis.

Indeed, I would point out the appendix to my statement, whereby a number of us have been sitting together, trying to talk in terms of ways of presenting more of a unified position before Congress.

I am indeed encouraged by that kind of relationship, because I think that it will make our job here, and yours, which are very difficult, much easier.

As a result of some of these meetings, I think that I would like to point out a couple of things. I would indicate that I am not sure whether you have had the Council of Greater Cities testify, but I must say that they have testified on the Senate side on this particular issue.

First of all, we have basically agreed that one of the items that we wish is a local passthrough provision. In other words, a provision similar to what you have in title I of the ACRND, or what exists with respect to a formula impact aid, when the number of impact children in a particular school district are counted, and the dollars flow to that particular school district.

Now, of course, State programs are a separate program, and we are not slighting them. You will find several references are made to those. I think that that kind of a concept makes sense for any kind of reasons.

One it gives that local school district something which it can count upon, something on which it can plan for. State programs, like vocational education, like the new consolidation really still require local applications, and local competition of the local school district to the State.

It may not be competing on a nationwide basis to the Office of Education, but the same problems in trying to put together a local budget, the same problems exist with State plan programs as do exist even if we are operating entirely out of the Office of Education.

The passthrough kind of provision would do tremendous things in terms of permitting a local school district to understand what it needs, and understand what it is going to be getting from the Federal Government, and therefore can fashion its programs.

Now, obviously, there has to be some sort of provisions that the program is of a size and substance that makes sense. Perhaps certain school districts are going to have to join together, if one does not have a sufficient number of handicapped children, and things of that sort. I think that those can be worked out.

I would like to point out that we press for a pass through provision. I think that if we take into consideration some of the audits that have taken place on State operated programs, which we have seen in the recent months, I think that there is only further evidence of a need for the pass through approach.

The second kind of comment is on excess cost. We asked Reverend Smith to testify, because San Diego is one of those examples of a school system which has done a great job. But the excess cost issue is still a thorny one.

While they have resolved it, we have had other school systems that are concerned about excess cost, particularly those who have a high concentration of other kinds of high cost students.

For example, an urban area which has a high number of educationally disadvantaged, the cost in and of itself may be high. The difference between that cost, and the cost for certain categories of handicapped, that range may be very small in those areas.

A suburban school district, which does not have the number of educationally disadvantaged, that range may be wider. We have not resolved the excess cost issue, and it is still a thorny one. That is why we have testified here today in terms of a school district that has resolved that, but that problem has not been thoroughly resolved in terms of nationwide issues.

One other comment. Reference has been made to some of my own constituents who have not done the job they should have done with respect to the education of the handicapped. There is no question that we are at fault in those instances, and there is no question that the blame resides with the board and with that school system.

But for compliance, may I suggest another way of looking at compliance, and that is through the auspices of civil rights complaints. It may sound peculiar from the School Boards Association looking toward the Civil Rights Office for our compliance. Some of our members have had problems with that same office, but nevertheless, it cleans up the system somewhat in terms that the operating program individuals do not have to worry on a day-to-day operation with the state of Federal officials in how the program moves, and how the internal operations take place. So it cleans up a lot of the paperwork.

If the Office of Civil Rights, similar to what Title IV of the Civil Rights Act, or the provisions with respect to sex discrimination are given, then additional responsibility, which we learn with respect to handicaps.

Going on record once again, we oppose the whole kind of amendment. If they had the opportunity once again to gain that kind of data, they could enforce that every handicapped youngster was guaranteed an education. At the same time, we who have to operate the schools, can move ahead in that endeavor.

I think that this is basically the kind of comments that I would like to leave with the committee. Obviously there is a lot more in my prepared statement. Thank you.

Mr. BRADEMAS. Thank you very much, Mr. Steinhilber.

Any questions, Mr. Cornell?

Mr. CORNELL. Yes, I would like to ask one question.

A couple of witnesses yesterday mentioned the fact that they set the goal of 1978 to make sure that every handicapped child in the United States have access to the type of education suitable to his needs.

I notice that you mention that the amount of additional funds required to achieve such a goal to be in excess of \$3 billion. Is that right?

Mr. STEINHILBER. We are using Office of Education figures in that respect. I understand that the Office of Education testified previously that it will take \$4 billion. We are saying that it would cost \$3 billion.

I would also say, with respect to a question that you asked Reverend Smith. It is indeed difficult as a political matter locally for a school district to come up with costs that they have not previously budgeted for the education of the handicapped, especially where you may have problems with the voters in terms of the local property tax.

I am not excusing them in terms of the needs of the handicapped youngsters, but all I am asking for in discussion from my papers a little bit is realization on your part of these problems, and to provide us with the wherewithal to make the transition.

Mr. CORNELL. I noted that in one other part of your formal statement you were talking about interim financing, and you referred to the Mathias amendment, and the Randolph amendment. I understand that funding would amount to \$680 million.

Mr. STEINHILBER. That is the authorization.

Mr. CORNELL. We were told yesterday that there are approximately 8 million in the general classification of handicapped. This is \$85 per handicapped person. Then, we were also told that approximately half of all the handicapped children in this country are not receiving adequate training, and that one million are receiving nothing at all.

So, I cannot see from my own point of view a figure of \$680 million could possibly serve the purpose.

Mr. STEINHILBER. Perhaps I shall rephrase what is in here in terms of the Mathias amendment, which became part of Public Law 93-380.

The Mathias amendment is an interim measure. We all understand the problem of trying, with the authorization being only 1 year, if it takes both Houses of Congress, and they feel that they cannot come forward with a full program, and I would say that it is not beyond the realm of possibility. If all the education associations join together, and we get grassroot support from the parents back there who feel very strongly about this, I do not see it beyond the realm of possibility of pushing it over the \$1 billion mark, even in today's economy.

I was speaking of Mathias here. If we are not able to develop that formula, and the details in time, at least a 1 year extension of the Mathias amendment will give us the vehicle to go back to the Appropriations Committee for a supplemental appropriation to keep what we currently have, plus going at least another year, until we can come up with the full program.

I would prefer not going to that stopgap, because we have already had one stopgap, and there is always a tendency, if you have 1 year extension that you get on that treadmill. I am just throwing that out as an option.

Mr. CORNELL. It makes it very difficult for planning, obviously, to go on a basis like that.

To go back to my point. We talk about providing, by 1978, proper education, suitable to the needs of the children in this country within that classification. We talk about \$3 billion. Would a total of \$3 billion provide for this?

Mr. STEINHILBER. Ideally, I would say that this is talking about annual, but I don't think that this is indeed possible. I feel kind of unusual talking about what I feel should happen, and what will be the political point of view.

Mr. CORNELL. I appreciate what you mean. I was just wondering, when we were talking about \$300 million, if we were figuring that.

Mr. STEINHILBER. We would hope that the authorizations are that high.

Mr. CORNELL. If we are figuring that on the basis of \$300 million, then it would amount to the figure that you were suggesting. Thank you.

Mr. BRADEMAS. Any other questions?

Thank you very much, Mr. Steinhilber. We appreciate your having come.

We will now hear from Mr. Richard Schifter, vice president of the Maryland State Board of Education.

STATEMENT OF RICHARD SCHIFTER, VICE PRESIDENT, MARYLAND STATE BOARD OF EDUCATION

Mr. SCHIFTER. Mr. Chairman, my name is Richard Schifter, and I am the vice president of the Maryland State Board of Education, and Chairman of the Governor's Interagency Task Force on the Education of Handicapped Children.

Accompanying me is Dr. James Sensibar, superintendent of schools of Maryland, and Dr. Francis X. McIntyre, the assistant State

superintendent in charge of special education. I would like to offer a few brief comments regarding the legislation before you, and also address the questions that come from Congressman Cornell.

In my years as a member of the State Board of Education of Maryland, I have found no experience as tragic or as frustrating as responding to telephone calls from parents who have handicapped children.

In each instance I would be told of the one all consuming problem with which the parents has lived for years. All too often I will have to respond that we wish we could be of help, but we do not have the funds to do the job that has to be done.

The State of Maryland and many of its subdivisions have made a major effort in recent years to provide funds for improved services to handicapped children. There is no question that we have made significant progress, but we have far to go before we can say that we are doing the best possible job for all the children affected.

The resources to do such a task are not likely to be available in the foreseeable future at the State and local government level. That is why the kind of support which S. 6 and H.R. 70 would offer is the kind of support that would be ideal.

Now, I would like to address myself to the question of political reality. One does not have to be clairvoyant to know that bills like S. 6 and H.R. 70 will have a certain amount of difficulty before they can be enacted in toto.

Furthermore, there is a serious problem of getting them really fully funded. Yet, the children that need to be served are here now, and any time that we lose may mean that opportunities for the affected children are lost irretrievably. That is why we are not taking an all or nothing approach, but ask that you also consider the possibility, as it may appear that a large program may not be funded without a major effort, which may take time, as an interim measure, the present authorization, the one that has been in effect for fiscal year 1975 be extended for fiscal year 1976, the so-called Mathias amendment of last year.

Last year's Mathias amendment has really begun to provide the funds to enable us to plan for significant program improvements in the field of special education in fiscal year 1976. The principle of that amendment works, and if the amendment were funded at a higher level—I would like to point out that we were funded for fiscal year 1975 at less than one-sixth of the authorized amount—we could build further on what we have already planned for next year, and the year following.

To begin with, our programs are already in existence, and even a very small incremental sum can change the character of the program from less than adequate to superior.

Beyond that, more importantly, Federal funds can be used to lay foundation for further progress, for the development of demonstration projects and special training programs. This latter point is most important, and I would like to underline it.

The point to remember is that our State legislation, and I assume other State legislations as well, insists on the distribution of the funds to the local school districts by some formula, so that these districts are in a position to carry out their programs.

Little, if any, money is left over to do the advance planning for further program development, or to address special needs or support special demonstration projects. For as long as Federal funds can be used more flexibly, we are able to make the kind of investment in the future that we have just described.

It is in that connection that I would raise the question about the advisability of the total pass through. It is in this context that I do ask also that the law that is now in the books be amended or clarified.

I would ask that the statutory provisions be amended to read: "all handicapped children of school age." My reason for suggesting that amendment is so that there will be no doubt that all States, in keeping with the provisions of the 14th amendment, provide educational service to all children of school age irrespective of their handicap.

As long as they fail to do so, they should be required to spend all Federal funds to meet the constitutional obligation before spending any money elsewhere.

However, the language now in the law has been read to require every state, not only to meet its constitutional obligation to its school age children, but to allocate available Federal funds to serve preschoolers before it can be used for any other purpose.

I want to say that all of us in Maryland are in favor of programs for pre-school-children, and we have conducted quite a number of them. It would be inadvisable for us to be compelled to use all available funds to develop preschool programs, if we have identified a greater need and a better use of the money elsewhere.

That is why we hope that you will adopt the proposed amendment. In other words, if the Federal Government were to insist that the Federal money be used to make every State live up to its constitutional obligations, without making it necessary for parents to go to court, that is certainly wise and proper.

However, once the Federal Government or the Congress were to move from an issue of constitutional law to a question of education policy, and tell the states what educational program is of priority, I would question the wisdom of your action. Quite frankly, I would assume that the result that the full provision has produced is not intended, and I am asking for a correction of the law.

To raise a final point. I would like to use the opportunity of appearing before this committee to mention the support from the Federal Government. I would like to urge this committee to take whatever steps are necessary to reduce the Federal requirements of paperwork, much of which is useless and meaningless. Forms and reports must frequently be filed by agencies like ours to Federal agencies.

Many of these reports simply use up time and paper and money without producing useful results for children. Far too often, we are involved in argument over substance, not over substance of programs, but disagreements of some gobbledigook that is to be incorporated into the report to the Department of Health, Education, and Welfare.

I would hope that in your legislative report, you would comment on this phenomenon, and urge an end to it.

In summary, while we recognize that it would be most helpful for handicapped children, if a bill such as S. 6 became law, we ask you also to consider an interim extension as is indicated in the Senate.

Thank you.

MR. BRADENAS. Thank you, Mr. Schifter. Let me make a couple of observations, and refer to the prepared statement of Mr. McIntyre, and invite you to comment on it.

You referred to the Office of Education and the Federal bureaucracy. I just made a speech this morning at 9 o'clock in which I was very sharply attacking the Office of Education for what I regard as an almost catastrophic mismanagement of the basic educational opportunity grant programs for students, or the Federal assistance programs. So, I am certainly willing to criticize Federal bureaucracy.

On the other hand, I have to reply with equal candor to your expression of concern about the bureaucracy, and the apprehension you raise about too much paperwork being required of you at the local level.

One of the reasons is, at least, that there is not sufficient sense of responsibility at the local level in the expenditure of funds. Therefore, it is essential for us to have some accountability.

Now, there would not be all these law suits all over the United States if you, at the local level—I am not talking about you, Mr. Schifter, because I use the term generally—if local school boards and States had been meeting the needs of handicapped children in this country.

You would not have to be dragged screaming and kicking into court in order to meet this problem. So, I myself commissioned a study by the General Accounting Office in reply to the question of how much general revenue sharing money had been expended by local units of government in calendar 1973, as I recall, for the needs of handicapped children.

As I recall, it is about three-tenths of 1 percent. Now do you see why we have to have a little paperwork to be sure that the people at the local level act in a civilized manner?

[Excerpt from the Congressional Record, June 11, 1974]

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., May 30, 1974.

HON. JOHN BRADENAS,
Chairman, Select Subcommittee on Education,
Committee on Education and Labor,
House of Representatives.

DEAR MR. CHAIRMAN: In accordance with your February 19, 1974, request, we have analyzed the data we collected on the disposition of revenue sharing funds by 250 local governments to determine the extent to which the funds were being targeted for handicapped people of all ages and children. A more general description of the uses of revenue sharing funds by these governments and our views on certain accountability aspects of revenue sharing are contained in our report entitled, "Revenue Sharing: Its Use by and Impact on Local Governments" (B-146285, Apr. 25, 1974), which has been provided to your office.

The Revenue Sharing Act (Public Law 92-512) provided for distributing approximately \$30.2 billion to State and local governments for a 5-year program. The Office of Revenue Sharing, Department of the Treasury, made initial payments under the revenue sharing program in December 1972 and had distributed about \$6.6 billion through June 30, 1973, to the 50 States, the District of Columbia, and about 38,000 local governments. Approximately one-third of the funds were distributed to the States and the remaining two-thirds to local governments.

One objective of revenue sharing is to give State and local governments flexibility in using funds. Therefore, the act provides only general guidance on how local governments can use the funds by requiring them to be spent within specified, but quite extensive, priority areas. The areas are: maintenance and operating expenses for public safety, environmental protection, public transportation,

health, recreation, libraries, social services for the poor or aged, and financial administration. In addition, a local government may use the funds for any ordinary and necessary capital expenditure.

We selected the 250 governments primarily on the basis of dollar significance and geographical dispersion. Our selection included the 50 cities and 50 counties that received the largest amounts of revenue sharing funds for calendar year 1972. The 250 governments received about \$1.658 billion through June 30, 1973, or about 38 percent of the approximately \$4.4 billion distributed to all local governments.

Including interest earnings on the revenue sharing funds through June 30, 1973, about \$1.688 billion was available for use by the 250 governments. The necessary legal and procedural steps were taken by 219 governments to authorize the expenditure of \$1.374 billion of these funds. The remaining 31 governments had not authorized the expenditure of any of the funds. As your office agreed, we analyzed the purposes for which the 219 governments had authorized expenditure of revenue sharing funds.

LIMITATIONS ON ANALYSIS

We did not accumulate specific data on revenue sharing funds authorized for the handicapped or children. We did obtain reasonably specific information, however, on the purposes for which the governments had earmarked revenue sharing funds. Therefore, we believe the data presented in this report indicates fairly the extent that the funds were being targeted toward these two groups. In certain instances the local governments had authorized the funds at a broad program or activity level without identifying the projects or activities to be financed. Some of these authorizations might result in the expenditure of funds for the handicapped or children.

The data we collected on the uses of revenue sharing funds was derived primarily from the governments' financial records. Because of the nature of revenue sharing, the actual effects of the funds may be different from the uses indicated by financial records.

When a government uses revenue sharing to wholly or partially finance a program which would have been financed from its own resources, other uses may be made of its own freed resources. Freed funds may be used for such things as tax reductions, increasing the funding for other programs, and reducing the amount of outstanding debt.

Because of such factors as changing amounts of revenue available to a government from its own sources and changing budgetary priorities, it is exceedingly difficult, and perhaps impossible in some jurisdictions, to identify objectively the actual effects of revenue sharing. Therefore, revenue sharing's effect on the local governments' assistance programs for the handicapped and children could be substantially different from that indicated by the information in this report. Also, this report contains no data on the extent to which such programs are being financed from other sources. Thus, a particular government may have earmarked no revenue sharing funds for the handicapped on children but nonetheless have significant programs in these areas.

PROGRAMS FOR THE HANDICAPPED

A total of 18 governments authorized part of their revenue sharing funds in programs or activities for the handicapped. These authorizations totaled about \$4.3 million, or about three-tenths of 1 percent of the \$1.375 billion authorized by the 219 governments. Enclosure I, briefly describe the programs for the handicapped that were being financed with revenue sharing funds by the 18 governments. When a program was directed toward handicapped children, we classified it as a program for the handicapped. The more significant programs included:

Suffolk County, New York, authorized \$2,104,702 for three programs consisting of \$991,235 for transporting physically handicapped children to school, \$716,087 for the physical rehabilitation of children with such medical problems as chronic diseases, and \$397,380 for physical therapy and recreation for the emotionally disturbed.

Passaic County, New Jersey, appropriated \$1,400,419 for assisting mental health programs primarily to maintain patients in State institutions for the mentally disabled.

Fresno County, California, appropriated \$225,000 to purchase and remodel a hotel for use as a rehabilitation center for the mentally ill.

Portland, Oregon, appropriated \$67,000 for the handicapped. Of this, \$45,000 was to renovate recreation buildings, including installing ramps and modifying restrooms. The other \$22,000 was for providing ramps at curbs on city streets.

PROGRAMS FOR CHILDREN

A total of 52 governments authorized part of their revenue sharing funds in children's programs or activities. These authorizations totaled about \$15.4 million, or a little more than 1 percent of the \$1.374 billion authorized by the 219 governments. Enclosure II briefly describes the programs being funded by revenue sharing. The more significant programs included:

Suffolk County, New York, authorized \$1,953,456 for three programs consisting of \$1,400,356 for payments to foster parents for foster care, \$507,099 for juvenile delinquent institutional care, and \$46,001 for a youth service program.

Riverside County, California, appropriated \$1,226,563 for several projects; including \$577,144 for constructing a juvenile detention hall and \$546,000 for constructing an office building for the juvenile probation department.

Los Angeles County, California, appropriated \$1,062,054 for juvenile probation activities, including \$487,621 for capital improvements at juvenile halls and \$457,450 for capital improvements at several boys probation camps.

Baltimore, Maryland, authorized \$1 million for summer youth activities consisting of \$650,000 for a youth employment program directed toward the disadvantaged and \$350,000 for a recreation program directed toward inner city children and the handicapped.

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

R. F. KIFFER,

Acting Comptroller General of the United States.

ENCLOSURE I

LOCAL GOVERNMENTS WHICH HAD AUTHORIZED REVENUE SHARING FUNDS FOR PROGRAMS FOR THE HANDICAPPED, AS OF JUNE 30, 1973

Government	Amount authorized		Nature of expenditure
	Capital outlay	Operation and maintenance	
Anchorage Alaska	\$38,500		Modification of city buildings for handicapped.
Baton Rouge, La.	14,400		Curbs cuts for handicapped.
Burlington, Vt.		\$22,000	Mental health center.
Fargo, N. Dak.		10,898	Visiting nurse service for chronically ill and disabled.
Fremont County, Wyo.	50,000		Mountable curbs for handicapped.
Fresno County, Calif.	10,000		School for retarded children.
Fulton County, Ga.	225,000		Mental health building.
Jackson County, Mo.	67,150	40,000	Mental health.
		37,731	Hearing disability diagnostic center.
		43,746	Recreation program for the handicapped.
Jefferson County, Ala.	23,750		Mental health.
King County, Wash.		7,476	Improved mental health facilities.
		6,375	Mentally handicapped.
Monroe County, N.Y.		21,678	Physically handicapped.
Navajo County, Ariz.	8,000		Mental health.
Passaic County, N.J.		1,400,419	Mental health facilities.
Portland, Oreg.	22,000		Mental health.
	45,000		Curbs and ramps for handicapped.
Prince Georges County, Md.		45,564	Modification of recreation facilities for handicapped.
Toledo, Ohio.		50,000	Mental hospitals.
Suffolk County, N.Y.		991,235	County mental health and retardation board.
		716,087	Transportation of handicapped children.
		397,380	Physical rehabilitation of children.
Sullivan County, Ind.		8,000	Mental health.
			Do.
Total	503,800	3,798,589	

Note: After June 30, 1973, funds could be reauthorized for other purposes before expenditure. Some governments authorized revenue sharing funds already received, as well as anticipated receipts. In such cases, the amounts shown above represent a proration of the amounts appropriated, to reflect appropriations of funds received through June 30, 1973.

ENCLOSURE II

LOCAL GOVERNMENTS WHICH HAD AUTHORIZED REVENUE SHARING FUNDS FOR PROGRAMS FOR CHILDREN, AS OF
JUNE 30, 1973

Government	Amount authorized		Nature of expenditure.
	Capital outlay	Operation and maintenance	
Ada County, Idaho.....	\$700,000		Juvenile home.
Anchorage, Alaska.....		\$22,600	Youth programs—Boys Club and Camp Fire Girls.
Baltimore, Md.....		350,000	Summer youth recreation.
		650,000	Summer youth employment.
Baton Rouge, La.....	50,000		Family court detention center.

Mr. SCHIFTER. Could I quickly reply?

I am in full agreement with your objectives. Let me make that clear: I was trying to choose my words advisedly. I am talking about, really, unnecessary material.

Let me tell you that as a school board member I get materials to read, and if you could just see what totally unnecessary material is being accumulated, and things that have to be worked on that are totally meaningless, and I want to underline that this is what I am talking about.

If these people were to spend time dealing with substance rather than words, I think that we would all be better off.

Mr. BRADEMAS. I think that we have no quarrel in that event, maybe semantics. One always has to be careful, at least in my experience, lest a complaint about Federal redtape be utilized as a pretext for failure on the part of local and state authorities to meet their responsibilities.

They run up the flag, and say: "You are trying to wrap all this redtape around us," and they really mean "We are not going to pay attention to the needs of the handicapped."

Mr. SCHIFTER. I fully agree with what you are saying. I am telling you that our experience has been very, very bad in matters that have nothing to do with the substance of programs.

Mr. BRADEMAS. Very well, we are in accord.

I have one question, because I am reading the statement of Mr. McIntyre, the assistant state superintendent of special education, in your State department of education, to summarize his point, and then to ask you one question, which will be my only question.

Almost a year ago, the Circuit Court of Baltimore County declared that it is the responsibility of the State of Maryland to provide a free education to all persons between the ages of 5 and 20 years, no matter how severely and profoundly retarded they may be.

I think that it is quite remarkable to see, how your state aid to handicapped in Maryland has gone up in the year 1966-67 from \$4.7 million, to in the year 1975-76 \$43.9 million. It is a tenfold increase in a decade.

You go ahead to say that the remaining half of the expenditures within the State of Maryland for special education comes from the local school system, bringing a total of \$88 million in state and local funds to which there is added \$6 million from Federal money, which means a \$94 million expenditure, of which you say, Mr. McIntyre, the Federal Government shares less than seven percent, if I have not misrepresented your analysis.

Mr. McINTYRE. You have not misrepresented the statement. There is some refinement required on the \$6 million Federal figure. That is the total amount of dollars coming into Maryland from the Federal source, and that includes vocational education, and that type.

For the actual education of the handicapped, it comes to \$4 million, and not \$6 million.

Mr. BRADEMAS. You then go ahead and make a point, which I think has very interesting public policy implications. To quote:

"A 25 percent Federal share in the cost of education programs for the handicapped is what is needed."

Now, maybe I misread you, but I would like to point the question to you. Are you thereby suggesting that another alternative to the other excess cost concept to meet this problem would be that for every dollar expended within a State, both by State and local sources, for the education of handicapped children—for every \$4 expended by local and State sources on the education of handicapped children, the Federal Government would put up \$1?

Mr. McINTYRE. Yes, sir. I am suggesting that for the following reason. As a result of a new bill passed and signed by the Governor in 1972-73, called by us "Senate Bill 649," which requires total education for the handicapped by 1980, and as a result of our right to education manifestation in Maryland, we came up with a decree, and we are in the process of refining the figures and working them down within fiscal constraints for the new administration.

The cost of the program to meet these two mandates comes to \$54 million. Again, conforming to the fiscal constraints of the State, we are compelled to operate a program that we consider costs someplace between \$64 and \$49 million.

It seems that we could do the job that we are compelled to do by the legislation, and the litigation, with an additional 25-percent support over and above the local and State support.

Mr. BRADEMAS. I am groping for another approach, or an effective approach that perhaps can help us overcome some of the dilemmas we get into, that we have already heard voiced with the excess cost approach.

Admittedly there are other policy questions that would have to be raised if you would follow a kind of a matching approach. One, to supply new money, you might say, that would be supplied over and above existing expenditures.

Another question would be, who decides what is the definition of the education of handicapped children. Priority might have to be given to the severely handicapped. There are a number of criteria that the Federal Government might quite legitimately impose as a condition of providing such funds.

I am now just thinking out loud.

Mr. SCHIFTER. Congressman, it would seem to me that what has to be kept in mind, I am sure that it is not only, as you have recognized, the substantive legislation, but the appropriation process as well.

What has already been indicated before, is that the board of education have reasonably certainty as far as advance money is concerned. Therefore, to the extent to which agreement can be reached between the substantive committee and the appropriations committee, so that we can really know to what extent we are going to be funded.

Mr. BRADEMAs. That is not good enough. You are responding to me, if I don't misread you, give us the money. I am asking you, what are you going to spend for?

Mr. SCHIFTER. As far as that is concerned, we can put in the record before you what it is that we are doing.

Mr. BRADEMAs. Suppose you take the money, and you don't spend it on the education of the handicapped children.

Mr. SCHIFTER. I presume that we would be violating the law, if the law is written so that we have to spend only on the education of the handicapped children.

Mr. BRADEMAs. We are not in disagreement on that.

Mr. SCHIFTER. You see, what I am talking about, I am talking about money earmarked for the education of special handicapped children. We would spend it on that. I am not talking about general education, I am talking about specific general education.

I am saying that what is most important for us is not to get hung up, that we have something on the books as to how much we are going to be spending on special education. Then, we appropriate only 75 or 80 percent, or whatever it is.

In terms of the planning that has to be done in the field of special education, what the county or school districts need in as indication of reasonable certainty of what it is—I realize that there is no certainty as to what might be coming in future years.

Mr. BRADEMAs. That is another kind of a problem, we could quarrel with that.

What we are talking about here, at least what I understand it is, what is the most rational way to determine how Federal funds should flow to States and local communities for the education of handicapped children.

The question that you raise is an important question, but it is not a question that could readily be answered here. That is a question of the politics of the matter with respect to the appropriation process, et cetera.

I am trying to get at what type of formula to use. That is what we need.

Mr. McINTYRE. I suggest, Mr. Chairman, and this is something that we are already struggling with, it is a requirement of the State plan which will commit the State to do what it intends to do with the ratification of the acceptance of the Office of Education.

Mr. SCHIFTER. I would say that if you were to commit to funding a certain percentage of the State programs for special education that certainly would be a very helpful way of looking at it.

Mr. BRADEMAs. It would be essential that there would be some federally established, or at least agreed upon criteria of special education. Otherwise, you could call it anything you want. You don't disagree with that?

Mr. SCHIFTER. If I may just say one thing about this. What I would hope is that in identifying the purposes, and I certainly agree that we should deal with the most seriously handicapped before we deal with the lesser handicapped. I would hope that we are not provided with a straitjacket, and I would want to mention in this connection, as I covered in my testimony, that the present law when it was enacted last year, requires us, the way that it has been interpreted by the Office of Education, to provide programs for preschoolers before we do anything else.

This is the kind of guideline that I think may not have been looked at truthfully, and to me it does not make sense. But, if you want reasonable guidelines that make certain that the State and local school systems deal with the problems of handicapped children in a certain sequence, dealing with the more seriously handicapped first, there is no problem with that.

Mr. BRADEMAs. Mr. Lehman from Florida.

Mr. LEHMAN. Pursuing that. I have been on the school board also, and I understand. The big problem that I have been dealing with is the definition of handicapped children. Some people want to include, for example, socially maladjusted children, and some don't.

Some want to include, perhaps, learning difficulty, and some don't. I just wonder whether we should require from the States some kind of uniformity as to who is a handicapped person, and whether there should be that kind of effort made by the Federal Government to see that the money is properly allocated according to these kinds of definition.

Mr. SCHIFTER. It would seem to me that as long as they are Federal dollars, you obviously have the right to put conditions. As you have indicated, there is disagreement, and there will always be disagreement as long as there are not enough funds.

I really cannot foresee that at any time in the near future we will have enough money to take care of everyone equally. Where there is an argument, and let me give you an illustration of it, you see we have, for example, at Roosevelt Hospital a State school, which is a school for very seriously handicapped children, children with very serious handicaps, or seriously retarded. The question is, just what kind of a program do you have for them.

Then, you may have a child who does not read too well. Then, you have to make a choice as to where you are going to put available dollars. These are all difficult choices. You have two totally different situations, and good arguments may be made for both sides.

Somebody eventually has to make that decision, and whether you want to make that decision in Washington, or let us make that decision in Baltimore, that is, of course, the right you have to decide. These are not easy matters by any means.

Mr. LEHMAN. We will have to come up with some uniformity, but how you are going to get from here to there is a difficult problem. Thank you.

Mr. BRADEMAs. Mr. Cornell.

Mr. CORNELL. Just one question. I note that at the onset of your statement you indicated that you were not too sympathetic to the suggestion as made by the previous witness on the question of pass-through of funds. Would you care to indicate why?

Mr. SCHIFTER. As I tried to explain, it is that what we are talking about here, as far as our State is concerned, is a relatively small amount of money. Let me be specific.

Now, we are being funded during this year at the level of \$100 million nationwide, which is \$2 million for our State. It is somewhere around 2 percent of what we are spending on special education in our State.

If you were to multiply that figure five times, as I hope you will—I am talking about the Congress through the appropriation process—we would get up to 10 percent, or close to 10 percent.

If you provide this to pass through to the local districts, it would be a matter of adding things onto each of the programs, but we are dealing here with a field in which a great deal of work has to be done. What we have attempted to do with Federal money that has come into the State is to fund special programs that can, then, after a while be copied.

These would be more difficult to fund, if we simply get allocations on a passthrough system from the Federal Government to the counties. In my opinion, we would not get the kind of advance planning, the training, the work that we are doing with teachers, and the special projects that we are instituting.

These would not be feasible if you just had a passthrough from the Federal Government to the school district, because the school district had to do it a little bit here and a little bit there, and cannot concentrate, as we could concentrate if we had a certain amount of money at the State level.

[Prepared statement of Francis X. McIntyre follows:]

PREPARED STATEMENT OF FRANCIS X. MCINTYRE

Mr. Chairman, Members of the Committee, my name is Francis X. McIntyre. I am Assistant State Superintendent for the Division of Special Education, Maryland State Department of Education.

Special Education today is a growing complex enterprise. It is beset with unprecedented problems and controversies. Incidence figures indicate there are 7,000,000 handicapped children, of whom 60% are denied the special educational assistance they need. One million are denied entry into our public schools, and hundreds of thousands are committed to residential institutions where little more than physical sustenance is provided at costs far in excess of what education and rehabilitation would cost.

Maryland, along with other states and territories, is moving rapidly to meet its responsibility to all handicapped children. However, the road ahead is rutted with the grim statistics indicated above.

Maryland's school population is about 900,000 children. If we use an incidence rate of 12.5%,¹ Maryland's suspected handicapped population is 112,500 children. We are currently serving about 70,000 handicapped children with appropriate special education services. That melancholy arithmetic leaves 40% who are receiving programs or services that cannot be considered appropriate, or none at all.

Two recent events in Maryland have heightened the necessity for the State to reach its goal of providing free and appropriate educational opportunities for all children by 1980.

Firstly, on May 21, 1973, Governor Mandel signed into law, Senate Bill 649, which became Section 106 D and E of Chapter 7B, of Article 77, of the *Public Education and Services to handicapped children*. Included among the more significant changes from the prior law are:

- a. Broadened definitions of the handicapped.
- b. Clarification of responsibility of State Department of Education to be accountable for education of the handicapped.
- c. Mandating of interagency coordination.
- d. Provision for education of all handicapped from birth through twenty years of age.
- e. Mandated all children, birth through twenty years of age, in appropriate educational programs by 1980.

Secondly, with the advent of *Pennsylvania Association for Retarded Children vs. the State of Pennsylvania* litigation and the *Mills vs. Board of Education of the District of Columbia* lawsuit, the rights of handicapped children to a free, publicly supported education suited to their needs has been established.

In December, 1973, the plaintiffs, Maryland Association for Retarded Children, (MARC) introduced in the Circuit Court of Baltimore County a right to education suit against the State Department of Education, State Department of Health and Mental Hygiene, and six local education agencies (Prince Georges County,

¹ Richard A. Rossmiller, James A. Hall, and Lloyd E. Frohreich, "Educational Programs for Exceptional Children: Resource Configurations and Costs." Madison, Wis.: University of Wisconsin, 1970.

Montgomery County, St. Mary's County, Baltimore City, Baltimore County, and Dorchester County). The plaintiffs contended that the defendant, the Maryland State Department of Education, had not provided free public education to fourteen (14) children representing various classes of severely to profoundly handicapped individuals. The plaintiffs further have contended that the State Department of Health and Mental Hygiene did not provide approved educational programs for children residing in State institutions. The plaintiffs alleged that Day Care Programs were not available to such severely and profoundly handicapped children. It was also alleged that the State and local unit defendants had virtually excluded severely and profoundly handicapped children from school programs.

On May 3, 1974, the Circuit Court of Baltimore County decided the following:

1. It is the responsibility of the State of Maryland to provide a free education to all persons between the ages of five and twenty years no matter how severely and profoundly retarded they may be.
2. Maryland's handicapped children shall receive their education in approved educational facilities.
3. Full funding shall be provided to those children who must receive their education in nonpublic facilities.
4. Free transportation shall be provided to handicapped children.

These two events have increased the rapidity in which the State must move to meet the mandate of the Court, as well as the mandate prescribed in Law. Furthermore, these events have created a serious fiscal drain upon the resources of the State and of local governments. The following figures indicate the extremely rapid growth in State support of programs for the handicapped.

State Aid for the Handicapped

Year:	Total cost	Year—Continue	Total cost
1966-67-----	\$4, 749, 484	1971-72-----	26, 220, 334
1967-68-----	9, 999, 264	1972-73-----	27, 493, 899
1968-69-----	14, 793, 506	1973-74-----	30, 663, 600
1969-70-----	15, 794, 967	1974-75-----	34, 500, 000
1970-71-----	20, 686, 572	1975-76-----	43, 900, 000

Recent State audits have indicated that the above cost figures represent only about one half of the total cost of Special Education. The remaining one half of the cost is borne by the local education agency. We are, therefore, operating in Maryland a program of about \$88,000,000 State and local funds. The Federal Government is contributing about \$6,000,000 over and above the \$88,000,000. We have, then, a \$94,000,000 program in which the Federal share is less than 7%. Unless the State of Maryland receives additional Federal support, Maryland and other states and territories will be unable to meet their mandates and responsibilities to the handicapped. A 25% Federal share in the cost of education programs for the handicapped is what is needed. This figure would bring expenditures to an adequate level for the states (based on Maryland's experience and without relinquishing control of programs to the Federal Government).

The most compelling argument against forceful and comprehensive Federal legislation supporting appropriate education for the handicapped is a poor one at best. Handicapped children are denied the available and developing techniques and programs simply because they cost more. The conclusion is that the handicapped child is less equal as a human being. He does not get what works for him as the normal child does, not because he is bad or his citizenship is different or even because his race or nationality is different, but because he is handicapped. I hope that makes no more sense to you than it does to me.

Mr. Chairman, we appreciate the opportunity to present our views on the legislation before your Committee today.

Mr. MILLER. I have no questions.

Mr. BRADEMAS. Gentlemen, thank you very much for your testimony. You have given us some interesting factual data, and some thoughtful analysis.

Our next witnesses are four in number: Mr. Walter Cegalka of the National Association of Retarded Citizens; Mr. Dudley Koontz, United Cerebral Palsy; Beverly Rowan, Joseph Kennedy Foundation; and Janet Rhoads, American Occupational Therapy Association.

As you can see, we are fast running out of time, so if you could make your statement as quickly as possible, that will enable us to put some questions to you.

STATEMENT OF THE CONSORTIUM CONCERNED WITH THE DEVELOPMENTALLY DISABLED PRESENTED BY WALTER CEGALKA, NATIONAL ASSOCIATION OF RETARDED CITIZENS; DUDLEY KOONTZ, UNITED CEREBRAL PALSY; BEVERLY ROWAN, THE JOSEPH KENNEDY FOUNDATION; AND JANET RHOADS, AMERICAN OCCUPATIONAL THERAPY ASSOCIATION

Mr. CEGALKA. Mr. Chairman, we come before you representing the consortium concerned with the developmentally disabled, an ad hoc Washington based organization of well over 20 organizations, representing and speaking for the developmentally disabled.

We appreciate the opportunity to appear before the subcommittee on behalf of the population that we serve. Our statement this morning broadly represents the feeling and the philosophy of the consortium members.

Several of the consortium members will be appearing before this committee with their individual statement, while other organizations will be submitting written statements for the record.

In general terms, however, the statement today represents the views and the concerns of the consortium concerned with the developmentally disabled.

I believe at this point, Mr. Chairman, we would like to take this opportunity to present our appreciation to the subcommittee staff for its cooperation and support, which we have received from you over the past few years.

Your sincere dedication and commitment to the people we are all trying to serve is evidenced by the frequent contacts, and open channels of communication between your staff and our organization.

As we all strive to provide an appropriate education for all handicapped children, we must carefully consider the recent statistics that have been published by the Bureau for the Education of the Handicapped, and which you have heard, which point out that barely one-half of school aged children and less than one-fourth of preschool aged children are receiving special education services.

Who are these unserved children? Why haven't they been given the opportunity to attend public schools as other children have?

A significant number of these unserved are severely handicapped youngsters. The multiply handicapped, the profoundly retarded, those with special medical problems, and those in our institutions and out-of-home care.

They are children who historically have been excluded from public schools. We have heard many alibi systems that are lengthy and diverse. Such alibis as:

It costs too much; they cannot profit from an education; it is not the education department's responsibility; there are no qualified teachers; and there are not enough children to start a new class and so on and on.

The new provision in Public Law 93-380 which established a priority in the use of Federal funds under that law for children not presently receiving an education is most vital.

We strongly recommend adopting the language contained in H.R. 70 and S. 6 which gives priority to those children with the most severe handicaps. These children are by far the most educationally neglected in our country.

Priority to serve them first with Federal education dollars is a must. In most states, it will be their only chance to receive services. The time is long past due, we believe, that these children are considered first and not last.

It is also time for the responsibility for educating all children within a State to be fully delegated to the State education agency. This agency could be responsible to oversee all education programs for all children within that State, regardless of the location or the administration of the educational facility.

Educational programs in institutions, usually operated by state agencies other than the education agency, are usually always poorer than those in regular systems. A child's residential setting should not dictate the quality of his education. All children should have access to an appropriate education. We strongly urge this committee to strengthen the state agencies' role in each child's education.

For many years legislation proposed and passed by Congress has focused on the delivery of an appropriate educational opportunity for every handicapped child at public expense. We applaud and support this goal.

Our concern rests with the lack of any concrete legislation specifically aimed at the development of a precise guarantee for all school aged children to be afforded an educational opportunity.

This would bring all of the school districts of this nation, by legislative mandate, in compliance with the constitutional right of equal protection with respect to handicapped children and youth as well as with the numerous court orders, with which I am sure the chairman is well acquainted.

We strongly urge the development of an effective compliance mechanism which would ensure that every school aged handicapped child in every State will have available and accessible to him or her a free appropriate public education at no additional cost to parents or guardians.

This should be made available in the least restrictive environment with due process guarantees in all matters of identification, evaluation, placement and reevaluation. It is essential that Congress mandate through legislation the establishment of such compliance mechanisms.

The consortium concerned with the developmentally disabled stands ready to assist the Congress in whatever way it may deem appropriate in the development of a mechanism or mechanisms which will insure this compliance on local and State levels by school systems charged with this responsibility.

Congress has mandated that educational services be made available and the courts have concurred, now it is time for the Congress to develop a mechanism to ensure that what it and the courts have decreed does, in reality, take place.

Mr. Chairman, from the standpoint of the existing formula and corresponding authorization levels in existing basic State grant program, title VI-B, we are faced with a most curious and urgent situation.

The so-called Mathias formula exists for fiscal 1975 only. In fiscal 1976 and fiscal 1977, we return to those very constricting authorization levels of \$100 million and \$110 million, respectively.

These figures are, upon reflection, actually a contradiction of the long-range intent of both the Mathias formula and the proposed amendments now under consideration. Namely, a substantial increase in the Federal financial commitment toward the education of America's handicapped children.

The desire to increase that financial commitment is evident on the appropriation committees of both Houses, since the state grant program now has a \$100 million appropriation for fiscal 1976, identical to the authorization level. It may be fully anticipated that the Congress will advance funds for fiscal 1977 at the full authorization level of \$110 million. Obviously, the monetary reservoir made available in the authorizing mechanism is filled to flooding.

Of equal significance is the unusual circumstance of observing prominent members of the Appropriations Committees in both Houses publicly and privately expressing their anxiety that the authorization levels are simply inadequate.

But even more significantly, we believe it is those factors beyond these walls and around the Nation which conspire to bring us to the moment of pressing clamor for increased Federal support, that is numerous States struggling and failing to meet their own implementation dates for "full service" as we have heard today, because of severely constricted budgets, an increasing number of court decrees ordering immediate "full service" for the plaintiff class, and the mounting voice against neglect from parents and advocates which can no longer be quelled by bureaucratic gestures.

Mr. Chairman, the formula for the State grant program to which we are about to regress must be revised on the most urgent timetable.

The consortium concerned with the developmentally disabled has developed a continuing working relationship with the Bureau for the Education of the Handicapped. The bureau has been extremely cooperative with, and sensitive to, the private education sector.

Several members of the consortium meet regularly with bureau officials, including the Associate Commissioner, on a monthly basis. We would like to emphasize to this subcommittee the dedication, sincerity, and leadership of Edwin Martin, associate commissioner of the Bureau for the Education of the Handicapped.

When one keeps in mind the number of excluded disabled children from public classrooms and the volume and scope of right to education, as a consortium, and as individuals, we must say that with all sincerity that a still large Federal effort is essential as well as required.

Thank you for the opportunity to present these remarks, and we will be pleased to attempt to respond to any questions you might have.

Mr. BRADEMAS. Thank you, Mr. Cegalka, for a most thoughtful statement. I think that you pinpointed the reason that we need to move ahead on the legislation as swiftly as possible.

What is your general reaction to the theory of the excess cost approach? In other words, what is your reaction to the approach represented in the two bills that are presently before us as a means of providing greater Federal support for the education of the handicapped children, or have you some other alternative that you think would make more sense?

Mr. CEGALKA. We concur with the excess costs principle, Mr. Chairman. I don't know that we have developed a mechanism for coming up with a precise formula that would be of assistance to you.

As I listened to some of the testimony this morning, I had some concerns that we not lose some children in some artificially contrived formula that would not allow for flexibility of individuals within categories, who might have multiple needs, or specific needs.

I guess I would say, not speaking for the consortium, I would be in favor of some excess costs formula, yet to be determined, that would have also some degree of flexibility built into it for individual programs to meet both the spirit and the intent of Federal legislation.

Mr. BRADEMAS. Thank you very much, Mr. Cegalka and your colleagues. I appreciate your testimony very much. I must go to another meeting, and I am, therefore, asking the gentleman from Wisconsin, Mr. Cornell, if he would be kind enough to take the chair.

I would simply say here that we will be making an announcement in a timely fashion on any further hearings on this subject.

Mr. CORNELL. Do you have any idea of what you think should be a reasonable figure for funding by the Federal Government? I notice, of course, your prediction of what will happen unless Congress takes action.

Now, would you feel that a continuation of the Mathias formula is an adequate formula?

Mr. CEGALKA. I think that it would be a step in the right direction. I am not sure that it would be sufficient funds to fully do the job. Maybe some colleagues would like to reply.

Mr. CORNELL. What strikes me is the fact that we are told that one half of the handicapped children in this country are not receiving adequate educational opportunity and about one-seventh thereof are receiving none whatsoever.

My feeling is, of course, that the biggest obstacle is the lack of financing. Obviously, the committee is going to have to deal with this question and we have to be realistic with the current economic situation.

As far as the Federal funding is concerned, it would be helpful if we had an idea of what you think.

Mr. CEGALKA. I don't think that at this time we could give you a figure. We would certainly like to, perhaps, have an opportunity to consult with one another to give you a figure.

Mr. CORNELL. We have a statement from the Commissioner of Education who estimates that if the excess costs proposal went through, that would be 75 percent of the excess costs over the average costs of education, that would be an approximate figure of \$4 billion per year.

It is highly improbable, of course, under the present circumstances that such a figure would ever be agreed upon.

One of the things that I would like to stress from my own point of view, and I noted the implication in your statement to that fact, it is

not only a question of educating those who are handicapped to train them to be self-supporting, or anything like that.

We have an obligation, it seems to me, to educate them simply so that they have a fuller appreciation and enjoyment of life in itself. There are many, obviously, who can never be trained or educated.

I am happy to see that apparently the courts agree with that point of view.

I note also the stress that you place on the education of those who have the severe handicaps, because obviously they are the ones that are most likely to be neglected. I certainly agree with you. I think that the legislation should stress that point of view.

Mr. MILLER. I would like to hear from the other members of the group as to the type of handicapped children that they are concerned with, and what specific programs we might fund in relation to those children in getting them put into the education system.

In the State that I come from, our past Governor was taking handicapped children out of State institutions and telling the community that they had to pick up the responsibility for those children. Really, the educational community in many parts of the State was not prepared, it did not know how to deal, especially with the multiple handicapped and the severely handicapped.

Although we have the best of intentions in our legislation, I am not sure that the children that it is designed to benefit will actually benefit from the programs.

Ms. RHOADS. I am a therapist working in a public school system in the State of Maryland. I am sorry that the Maryland people have already left, because I can see the problems with the compliance mechanisms at the local level of delivering the service, and the difficulties we have in setting priorities in concert with the State board of education.

For example, right now in Prince George's County we have a federally funded project which is an early identification project. A team of people are going out and picking up kids with identifiable problems. These would be visual problems, hearing impairments, physical disabilities, and some learning disabilities—primarily those four categories.

Mr. MILLER. All physically related?

Ms. RHOADS. Not necessarily, some may and some may not. So, at the present time that team has identified 200 children in need of services.

We have had several preschool programs for children needing special services, and now we hear from the State department of education that we no longer can have these preschool services. So now we have 200 children, whom we have identified as needing services, and we know the services they need, but we do not have the funds now allocated to continue with the programs that we had already started.

How can we develop some sort of compliance mechanism? I was particularly distressed at the difference in philosophy with the State saying that they were developing programs for ages 5 to 20, and see that as their responsibility, whereas legislation is saying ages 3 to 20.

We even feel that the program should start before the age of three, to get kids into the mainstream. So, we are saying three and they are saying five. How do you work these problems out?

Mr. KOONTZ. As a past president of the United Cerebral Palsy, I would like to respond.

I would like to comment briefly on this matter of levels of support, and so forth. Being neither an educator nor a legislator I am certainly not competent to decide, or describe. Ultimately that will be your responsibility, but I am very much concerned with the general principle that if a community, for whatever reason, is unable to provide an adequate educational opportunity for its children, that the burden should not fall disproportionately on those who are handicapped.

As we all recognize, I think that this is all too often the case. We are confronted every day with distressing situations of those children who most badly need educational help, are all too often the last to receive it.

So, it seems terribly wrong and terribly unfair to us that the burden should be borne especially by those who most badly need help. We have all heard the excuse, I am sure, in our communities that special education is so terribly expensive that we cannot afford this, that or the other program.

I would hope that the committee would continue to bear that in mind in its evidence, and my layman's understanding of H. R. 70.

I might mention, just in passing, I have heard the interest that has been expressed in terms of developing a formula on this kind of thing, and a system is just now being implemented in the State of Iowa that might be of some passing interest, because it does have a virtue to it, it seems to me.

Directors of special education are required by law to identify each youngster requiring special education, and to decide whether which of three levels they fit into. There are no diagnostic labels involved, but it is on the level of needs as it is understood by the director.

They are assigned a level of either 1.8, 2.2, or 4.4, and they are, in effect, counted as that many persons for purposes of deciding the average daily attendance. This has its implication, then, in the level of State aid which is based on the number of youngsters in the school district.

Now, the virtue this has is that to the extent the State is unable, for whatever reason, to meet the full level of needs of the district, the burden falls more proportionately across the entire spectrum of students, instead of being focused on a narrow segment.

Mr. CORNELL. I think that I would agree with you very strongly there. I know we had a similar situation a number of years ago when we were voting on my home State on an amendment on vocational education. At the time we had vocational districts with property tax supports.

The argument made to us at that time was that our particular district had a great variety of programs, and was less expensive than in other parts of the State. We should, therefore, vote against any State funding, because we were better off this way.

When a representative of our district appeared before a group, of which I was a member, I had very strong criticism on that. I think that it is a very basic thing that we ought to have an equal opportunity for education for all American students, regardless of where they live and what they do, or whatever their handicaps.

I think that we have to take that into consideration in financing. The big problem, obviously, and I don't think that there is any disagreement, the big problem as far as we are concerned, is the formula that can be developed that will be possibly based on State efforts.

There are many States that have not made the effort. The problem with that is how to encourage States that are not making any effort to use the formula, to take action.

Obviously, you don't have any idea on a formula that you think might be feasible?

Mr. CEGALKA. Coming back, Mr. Chairman, to the Federal dollars needed, we all know, realistically, that this Congress cannot appropriate all of the funds that are needed, especially not this year. I think we all feel that the passage of the full service clause for all children, that kind of a mandate would give us better leverage at all funded levels of the Federal, State and local level, to find the necessary dollars.

I think that passage of these requirements is just as important as the Federal funds that you will appropriate this year. I think that it would be extremely helpful.

Mr. CORNELL. Thank you.

Mr. Miller?

Mr. MILLER. I just wonder. One of the concerns that I raised yesterday, if you feel qualified to comment, please do, is that perhaps we find an overclassification of children in our school systems, namely the emotionally disturbed area, where in the name of keeping the order in the classroom, there is a tendency to move the child out to a special program.

It has been indicated to me by a number of teachers in the district which I represent that this was done for that reason, and it was also done because the school receives additional resources that they could not otherwise get in terms of special education.

It is my concern that we are placing labels on some individuals in a rather arbitrary fashion, a label that may hinder them the rest of their life. So, you have that problem.

You also have the siphoning off of resources that should legitimately be going to those who need it.

I just wonder if you have any comments on that?

Ms. ROWAN. I am an attorney, so I am concerned with the rights issues. I think that this is something that is largely taken care of through the rights protections that are contained in the law.

I think that people who have an opportunity for a due process hearing with regard to evaluation, and labeling of their children, go in either way.

The problem that you are talking about really has a reverse side. There are children who really have handicapping conditions, are overlooked, and they are dealt with only as behavioral problems. So, they are not being directed to programs that would be appropriate for their condition. So it really works both ways.

I think that we really will have to rely to a large extent on the due process that requires a hearing, so that there will always be an opportunity, where there would be any kind of a conflict, for the parents of these children to have the matter fully discussed and determined by an appropriate board.

Mr. MILLER. I just wonder if many of the parents in the low income classification are aware of the due process. We have medical malpractice—

Ms. ROWAN. It is very a sad problem, and this is one that we must all address. We have to educate our people within our States to the question rights. Their children have rights. I don't know how it can be best approached, but perhaps through associations for retarded children, or associations for epileptic citizens, or whatever associations we have, to begin to educate the public. That is really a sad question.

Mr. MILLER. It is your contention that the due process and rights protection of the current law really addresses itself to that problem adequately?

Ms. ROWAN. Perhaps not adequately, I would go further with it that, but it does not address the problem.

Mr. KOONTZ. May I address a comment briefly on that?

I agree fully with everything that Ms. Rowan said. There is certainly a dilemma here. It seems to me that it is almost inescapable. We all regret the need for labeling, and identifying, because it always carries with it the danger of stigmatizing the youngster, and it being an unfair label, or whatever.

It is helpful, I think, and certainly the legislation should move in this direction, that in many areas that we would look more in terms of the level of needs, or the kinds of needs instead of diagnostic labels. This is one useful part.

Certainly our experience on the local and State level has time and time again been that the handicapped, and especially the multiple and severely handicapped, are forgotten and neglected in broad programs, unless there is some kind of earmarking.

Mr. MILLER. You are not suggesting that the mislabeling includes all those in need, because I don't think that this is the argument. We want to pick those that are in the most obvious need, and we are not arguing that the most severely handicapped should not be included. It is a question of what broom you sweep with.

Mr. CORNELL. There is one phrase that occurs in your statement that we have heard on a number of occasions. The intent is obvious. It is the "less restrictive environment." I think that sometimes we go a little too far in that.

For instance, back in the area in which I live we have a school for the deaf, and another one for those who are crippled in various ways. I think that this is kind of an ideal situation.

I have heard statements that the handicapped are better off in the regular school system, and that sort of thing. Do you have any views on that?

I note that you used the term "least restrictive environment." Do you mean institutionalization?

Mr. CEGALKA. Speaking for the National Association for Retarded Citizens, our policy has always been that handicapped children should be educated whenever possible in the public school.

I personally know on a number of different occasions, different groups commented and decided that a society that would segregate its handicapped children, as children, from their proper school, would be the same society that would institutionalize its adults.

Mr. CORNELL. You have special training with specialized teachers.

Mr. CEGALKA. Quite obviously.

Mr. CORNELL. In other words, you are really talking about the institution as such, the schools. They are in the school, but they have special classes, special training programs?

Mr. CEGALKA. I would say that for the more mildly handicapped, Mr. Chairman, they could be integrated fully or partially within regular classes. For those who are more moderately or severely handicapped, they might receive most of their educational experience with support services.

Some would have to spend the whole school day in a self-contained classes, but it is our feeling that these classes should be contained within the local public schools.

Mr. MILLER. You say "within the local public schools," and you mean within the local area?

Mr. CEGALKA. The local public schools.

Mr. MILLER. For the severely and multiple disabled, you think that you can provide them the same level of services as you might in a special institution for that purpose?

Mr. CEGALKA. That is my feeling, that we could do that. It simply means that we would have to be sure that those services are afforded. It is simply a reshuffling of the debt. It is not asking for additional funds.

Mr. MILLER. It is more than a reshuffling of the debt, because I can think of, in California, the Patton State Hospital, where you have real resources in terms of research, and in terms of therapy, and educational prospects. I do not think that you could duplicate that in the school district, where you may only have a dozen of those children. How do you duplicate the resources that are going to be received?

You may do it on a regional basis, or a local basis, which I would prefer. I think that it should be more localized, because to take the children away from the parents is very difficult.

Mr. CEGALKA. I have heard similar arguments, and I have heard similar arguments in my own State. We need a large multipurpose facility, so that we can concentrate the services and provide more appropriate services for the mentally retarded children.

One of our State institutions for the mentally retarded in the State of Missouri is in Marshall, Mo. Most people in the State have never heard of it either. I would ask what kind of professional staff in terms of supportive services, occupational therapists, do you think that we can recruit for such a specialized facility located in Marshall, Mo.?

Mr. MILLER. You are basing your argument on the locality? I am not saying that you need one state facility. What I am saying is, do you dissipate your services, when you say that the child has to be in the local school?

In the county that I represent, we have two facilities, which service two school districts within a 25 mile radius, and provide the concentrated services that can benefit them. If we try to do that in each of the schools where the children have to live, I suggest that the child is the one that is losing.

Mr. CEGALKA. Let me back up on one issue, so that we have no misunderstanding.

I think that we can clearly document that most State institutional facilities for handicapped children currently are located in vastly under-populated areas of the State. So that is one argument.

The other point we would like to make is that they can provide the kinds of services, which we both agree, ought to be provided on an itinerant basis where the benefit of being in the local public school far outweigh any disadvantages. In fact, I see very few disadvantages to child being in the local public school system.

I think that we can have the specialists come to the program on an itinerant basis. Some of the children, by their very nature, might be somewhat immobilized, but the people providing the services are not.

This is exactly what Janet does. She is an educational therapist, and she goes from one school to another, and from class to class, and provides those supportive services that are necessary.

We have been using that kind of model for years.

Mr. CORNELL. You mention the term "public school," and then you mention the term "public school system." I mentioned to you the problem we have back in our area, where we have a special school for the deaf, and then we have another one for those orthopedically handicapped, and cases like that, where you have a special installation for the wheelchair, and things of that nature.

I think you will have to admit that you have to have specially trained people to deal with these. I just wonder if they are not better off, from a number of points of view—for instance the amount of competition with others in the same situation.

Mr. CEGALKA. May I point out, Mr. Chairman, that there is a meeting ground between the extreme of a state institution on the one hand, and reproducing all of these services literally in every school district, which clearly is impractical.

We have in my own district an illustration of an integrated facility that is working beautifully, in which the most profoundly handicapped on an areawide basis of 40 to 50 miles, are in a school building which also contain classes for the neighborhood youngsters who suffer from no handicap from the conventional sense of the word.

We are able to combine them. They can get occupational therapy, and the rest of the services.

Mr. CORNELL. You would not agree, then, to having an additional school for the deaf, or that type of training?

Mr. CEGALKA. As an individual I would say no. I think that one of the things that must be kept in mind, I think that in rural areas we may need some kind of residential-type facility, because of the sparsely populated areas, because we are talking about small numbers of children who need extraordinary services, and it would not be economically feasible to have even an itinerant teacher providing services, such as in certain parts of Wyoming.

On the other hand, I think that in our urban areas we could very clearly provide services for handicapped children within the public schools.

I think that perhaps one other point would be that for years we had legislation that has mandated that all public buildings be accessible to physically handicapped individuals, and public schools and other buildings, the agencies have flagrantly violated those mandates, which means that we are at the point where we need some very strong compliance mechanism in these bills.

If we had implemented some of the things that we already had on books, even in our own State and other States, we would not be in

this position. The schools that have been built in the last 5 years should have been accessible to the physically handicapped, but they are not.

Mr. CORNELL. Your reason for stressing this factor of "the least restrictive environment" is your belief that psychologically it is better to use that term in a very broad way for the handicapped, than to be segregated in the sense of their own school?

Mr. CEGALKA. I think that we have learned from civil rights, and maybe someone else can speak to that better than I can, separate can never be equal, regardless of what kind of a monument you build. This again is a very strong personal opinion.

I feel that it is time in 1975 that we have—that we should look at all individuals as fellow human beings, as equal under the law. I would respectfully suggest that this has not been the case, particularly for the severely and profoundly mentally retarded individuals.

The prevailing philosophy has been, if you will, that these are less than human individuals. I think that it is time that we corrected this thinking, and that the best correction can be early disclosure.

I have very great faith in the youth of this Nation, not only the ones sitting in the back of the room, but the 3 or 4 year olds who interact with individuals, whether they are physically handicapped, whether they are disturbed, or profoundly retarded, on an equal basis.

It seems that as we go into adulthood, we somehow lose a certain degree of flexibility in interacting. I think that we ought to build that into our educational process early, and this would be a better world for all of us.

Mr. CORNELL. I don't disagree at all with what you say, it is just that I wonder whether the education of the handicapped is better served by schools of the type that I have spoken of. Obviously, there is disagreement on the point of view.

Mr. CEGALKA. With the proper compliance measure, I share, I think, your concern, and I have had a concern for many, many years, because I have witnessed handicapped children, perhaps, getting lost sometimes when they are placed back into public education facilities.

It will take very, very strong, very, very well-trained teachers to be able to operate in this kind of facility, because the support system that one has in these facilities where everyone is trained, including the administrators, toward handicapping conditions simply will not be there in public education settings.

So these are problems that we are actually acutely aware of, but I think that with proper support systems—

Mr. CORNELL. We have a quorum call. Thank you very, very much.

The hearing is adjourned subject to call from the chairman.

[Whereupon, at 12:15 p.m., the hearing was adjourned, subject to call of the Chair.]

EXTENSION OF EDUCATION OF THE HANDICAPPED ACT

MONDAY, JUNE 9, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SELECT EDUCATION OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:07 a.m., pursuant to call, in room 2175, Rayburn House Office Building, Hon. John Brademas [chairman of the subcommittee] presiding.

Members present: Representatives Brademas, Cornell, Miller, Hall, and Quie.

Staff members present: Jack Duncan, counsel; Annie Goekjian, assistant to the counsel; Patricia Watts, administrative assistant; and Martin L. LaVor, minority legislative associate.

Mr. BRADEMAS. The subcommittee will come to order.

This morning the subcommittee will meet in order to receive the position of the administration on H.R. 7217, the Education of All Handicapped Children Act of 1975. This measure has been introduced by a majority of the Education and Labor Committee and was unanimously reported by the subcommittee.

You are all aware of the statistics which prompted this legislation. There are 7 million handicapped children in the United States.

Only half of them are receiving an education appropriate to their needs.

One million handicapped children, generally those with the most severe handicaps, are receiving no education at all.

We also know that a series of Federal court decisions have held that all children are entitled to a free public education.

State and local school agencies have found their resources inadequate to provide a special education to handicapped children. Many State and local school agencies are experiencing difficulties in meeting their regular costs of education, much less the cost of providing special education.

In order to aid State and local agencies to meet their responsibilities and provide every handicapped child with an education suitable to his or her needs, we are supporting the Education of All Handicapped Children Act of 1975.

We welcome the representatives of the administration who appear before us today. Since we have not seen their testimony, we continue to hope that they will join with us in making a commitment to provide every handicapped child an education appropriate to his needs.

[Text of H.R. 7217 follows:]

(103)

94TH CONGRESS
1ST SESSION

H. R. 7217

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 1975

Mr. BRADEMAS (for himself, Mr. BELL, Mr. PERKINS, Mr. QUIG, Mr. MINN, Mr. PEYSER, Mr. MEEDS, Mr. JEFFORDS, Ms. CHISHOLM, Mr. PRESSLER, Mr. LEHMAN, Mr. CORNELL, Mr. BEARD of Rhode Island, Mr. ZAFERETTI, Mr. MILLER of California, Mr. HALL, Mr. FORD of Michigan, Mr. HAWKINS, Mr. THOMPSON, Mr. DENT, Mr. BIAGOLI, Mr. O'HARA, Mr. ANDREWS of North Carolina, Mr. RISENHOOVER, and Mr. SIMON) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Education of the Handicapped Act to provide educational assistance to all handicapped children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Education
5 for All Handicapped Children Act of 1975".

6 EXTENSION OF CERTAIN PROVISIONS

7 SEC. 2. (a) (1) Section 611 (c) (2) of the Education
8 of the Handicapped Act (20 U.S.C. 1411 (c) (2)) (here-

I

1 in after in this Act referred to as the "Act") is amended by
2 striking out "year ending June 30, 1975" and inserting in
3 lieu thereof the following: "years ending June 30, 1975,
4 and 1976, and for the fiscal year ending September 30,
5 1977".

6 (2) Section 611(d) of the Act (20 U.S.C. 1411(d))
7 is amended by striking out "year ending June 30, 1975"
8 and inserting in lieu thereof the following: "years ending
9 June 30, 1975, and 1976, and for the fiscal year ending
10 September 30, 1977".

11 (3) Section 612(a) of the Act (20 U.S.C. 1412(a))
12 is amended—

13 (A) by striking out "year ending June 30, 1975"
14 and inserting in lieu thereof "years ending June 30,
15 1975, and 1976, and for the fiscal year ending Septem-
16 ber 30, 1977"; and

17 (B) by striking out "fiscal year 1974" and insert-
18 ing in lieu thereof "preceding fiscal year".

19 (b) (1) Sections 614(a), 614(b), and 614(c) of
20 the Education Amendments of 1974 (Public Law 93-380:
21 88 Stat. 580) each are amended by striking out "fiscal year
22 1975" and inserting in lieu thereof the following: "the fiscal
23 years ending June 30, 1975, and 1976, for the period begin-
24 ning July 1, 1976, and ending September 30, 1976, and for
25 the fiscal year ending September 30, 1977,".

1 (2) Section 614 of the Education Amendments of 1974
2 (Public Law 93-380; 88 Stat. 580) is amended by striking
3 out subsection (a) and by redesignating subsection (f) as
4 subsection (e).

5 (c) (1) Section 615 (a) of the Education Amendments
6 of 1974 (Public Law 93-380; 88 Stat. 582) is amended by
7 striking out paragraph (1) and redesignating paragraph (2)
8 as subsection (a).

9 (2) Section 615 (a) of the Education Amendments of
10 1974, as so redesignated by paragraph (1), is amended—

11 (A) by striking out "July 1, 1975" and inserting
12 in lieu thereof "October 1, 1977";

13 (B) by striking out "612 (a)" and inserting in lieu
14 thereof "612"; and

15 (C) by striking out "paragraph" and inserting in
16 lieu thereof "subsection".

17 (3) The amendment made by section 615 (a) of the
18 Education Amendments of 1974, as so redesignated by
19 paragraph (1), is amended by striking out "(3)" and
20 inserting in lieu thereof "(f)".

21 (4) Section 615 (d) of the Education Amendments of
22 1974 (Public Law 93-380; 88 Stat. 583) is amended by
23 striking out "subsections (a) (1) and" and inserting in lieu
24 thereof "subsection".

25 (d) Sections 843 (b) (1), 843 (b) (2), and 843 (b)

1 (3) of the Education Amendments of 1974 (Public Law
2 93-380; 88 Stat. 611) each are amended by striking out
3 "June 30, 1975" and inserting in lieu thereof "September 30,
4 1977".

5

STATEMENT OF PURPOSE

6 SEC. 3. (a) Section 601 of the Act (20 U.S.C. 1401)
7 is amended by inserting "(a)" immediately before "This
8 title" and by adding at the end thereof the following new
9 subsections:

10 "(b) The Congress finds that—

11 "(1) there are more than seven million handicapped
12 children in the United States today;

13 "(2) the special educational needs of such children
14 are not being fully met;

15 "(3) more than half of the handicapped children
16 in the United States do not receive appropriate educa-
17 tional services which would enable them to have full
18 equality of opportunity;

19 "(4) one million of the handicapped children in
20 the United States are excluded entirely from the public
21 school system and will not go through the educational
22 process with their peers;

23 "(5) there are many handicapped children through-
24 out the United States participating in regular school
25 programs whose handicaps prevent them from having a

1 successful educational experience because their handi-
2 caps are undetected;

3 “(6) because of the lack of adequate services within
4 the public school system, families are often forced to
5 find services outside the public school system, often at
6 great distance from their residence and at their own
7 expense;

8 “(7) developments in the training of teachers and
9 in diagnostic and instructional procedures and methods
10 have advanced to the point that, given appropriate
11 funding, State and local educational agencies can and
12 will provide effective special educational programs and
13 related services to meet the needs of handicapped
14 children;

15 “(8) State and local educational agencies have a
16 responsibility to provide education for all handicapped
17 children, but present financial resources are inadequate
18 to meet the special educational needs of handicapped
19 children; and

20 “(9) it is in the national interest that the Federal
21 Government assist State and local efforts to provide
22 programs to meet the educational needs of handicapped
23 children.

24 “(c) It is the purpose of this title to assure that all
25 handicapped children have available to them special educa-

1 tion and related services designed to meet their unique needs,
2 to assure that the rights of handicapped children and their
3 parents or guardians are protected, to relieve the fiscal burden
4 placed upon States and localities which attempt to provide
5 for the education of all handicapped children, and to assess
6 and assure the effectiveness of efforts to educate handicapped
7 children.”.

8 (b) The heading for section 601 of the Act (20 U.S.C.
9 1401) is amended to read as follows:

10 “SHORT TITLE; STATEMENT OF PURPOSE”.

11 DEFINITIONS

12 SEC. 4. (a) Section 602 of the Act (20 U.S.C. 1402)
13 is amended—

14 (1) in paragraph (1) thereof, by striking out
15 “crippled” and inserting in lieu thereof “orthopedically
16 impaired”;

17 (2) in paragraph (1) thereof, by inserting im-
18 mediately after “impaired children” the following: “, or
19 children with specific learning disabilities,”;

20 (3) in the last sentence of paragraph (8) there-
21 of, by inserting immediately before “other public institu-
22 tion” the following “public educational agency or
23 any”;

24 (4) in the last sentence of paragraph (15) thereof,

1 by inserting immediately after "environmental" the fol-
2 lowing: ", cultural, or economic"; and

3 (5) by adding at the end thereof the following new
4 paragraphs:

5 "(16) The term 'special education' means specially de-
6 signed instruction to meet the unique needs of a handicapped
7 child as set forth in the individualized education program of
8 such child, including classroom instruction, home instruction,
9 and instruction in hospitals and institutions.

10 "(17) The term 'related services' means transportation,
11 and such developmental, corrective, and other supportive
12 services (including speech pathology and audiology, psy-
13 chology, physical and occupational therapy, physical educa-
14 tion and recreation, and medical and counseling services) as
15 may be required to assist a handicapped child to benefit from
16 special education. Such term includes the early identification
17 and assessment of handicapping conditions in children.

18 "(18) The term 'free appropriate public education'
19 means special education and related services which (A)
20 have been provided at public expense, under public super-
21 vision and direction, and without charge; (B) meet the
22 standards of the State educational agency; (C) include
23 an appropriate preschool, elementary, or secondary school
24 education in the State involved; and (D) are provided in

1 conformity with the individualized education program re-
2 quired under section 614 (a) (7).

3 “(19) The term ‘individualized education program’
4 means an educational plan for each handicapped child devel-
5 oped jointly by the local educational agency, an appropriate
6 teacher involved with the education of such child, the parents
7 or guardians of such child, and, whenever appropriate, such
8 child, which includes (A) a statement of the present levels
9 of educational performance of such child; (B) a statement
10 of the instructional objectives to be achieved; (C) a state-
11 ment of the specific educational services to be provided to
12 such child, and the extent to which such child will be able
13 to participate in regular educational programs; (D) the pro-
14 jected date for initiation and anticipated duration of such
15 services; and (E) objective criteria and evaluation proce-
16 dures and schedules for determining, on at least an annual
17 basis, whether instructional objectives are being achieved.

18 “(20) The term ‘public educational agency’ means
19 any State educational agency or any other public agency
20 approved by a State educational agency to provide special
21 education and related services to handicapped children
22 within the State involved.

23 “(21) The term ‘excess costs’ means those costs which
24 are in excess of the average annual per student expenditure
25 in a local educational agency during the preceding school

1 year for an elementary or secondary school student, as may
2 be appropriate, and which shall be computed after deducting
3 (A) amounts received under this part or under title I or
4 title VII of the Elementary and Secondary Education Act
5 of 1965; and (B) any State, local, or private funds ex-
6 pended for programs which would qualify for assistance
7 under this part or under such titles.”.

8 (b) The heading for section 602 of the Act (20 U.S.C.
9 1402) is amended to read as follows:

10 “DEFINITIONS”.

11 PAYMENTS

12 SEC. 5. Section 611 of the Act (20 U.S.C. 1411) is
13 amended to read as follows:

14 “PAYMENTS

15 “SEC. 611. (a) The Commissioner shall make payments
16 in amounts which States and local educational agencies are
17 eligible to receive under this part.

18 “(b) Payments under this part may be made in advance
19 or by way of reimbursement and in such installments as the
20 Commissioner may determine necessary.”.

21 ALLOTMENTS TO LOCAL EDUCATIONAL AGENCIES

22 SEC. 6. (a) Section 612 of the Act (20 U.S.C. 1412)
23 is amended—

24 (1) in the first sentence of subsection (a) (1)
25 thereof, by striking out “for payments to States under

1 section 611 (b) " and inserting in lieu thereof "to make
2 grants under this part";

3 (2) in subsection (a) thereof, by striking out para-
4 graph (2) thereof, and by striking out "(1)" immedi-
5 ately before "There is hereby"; and

6 (3) by striking out subsections (b) and (c) and
7 inserting in lieu thereof the following new subsections:

8 "(b) (1) Except as provided in subsection (c) (1),
9 from the total amount appropriated for any fiscal year, the
10 Commissioner shall allot to each local educational agency
11 an amount equal to the product of—

12 "(A) the number of handicapped children in the
13 school district of the local educational agency who are
14 enrolled in programs of free appropriate public educa-
15 tion which meet the criteria established in section 614
16 (a) (1); and

17 "(B) 50 per centum of the average per pupil ex-
18 penditure in public elementary and secondary schools in
19 the United States.

20 "(2) The number of handicapped children enrolled in
21 any fiscal year in programs described in paragraph (1) (A)
22 shall be equal to the average of the number of such children
23 enrolled on October 1 and February 1 of the preceding fiscal
24 year.

25 "(3) For purposes of paragraph (1) (B), the term

1 'average per pupil expenditure' has the meaning given it by
2 section 403 (16) of the Act of September 30, 1950 (Public
3 Law 874, Eighty-first Congress).

4 " (4) Notwithstanding any other provision of this part,
5 each State shall be entitled to a level of funding for any fiscal
6 year which is at least equal to the level of funding which such
7 State received for the fiscal year ending September 30, 1977.

8 " (c) (1) The Commissioner, in determining the allot-
9 ment of local educational agencies of the same State under
10 subsection (b) (1), may not count handicapped children in
11 such State under subsection (b) (1) (A) to the extent the
12 number of such children is greater than 12 per centum of the
13 number of all children aged five to seventeen, inclusive,
14 in such State. In any case in which the number of handi-
15 capped children in a State is greater than 12 per centum of
16 the number of all children aged five to seventeen, inclu-
17 sive, in such State, the amounts which all local educational
18 agencies are eligible to receive under this part shall be
19 ratably reduced in a manner which assures an equitable
20 distribution of allotments to such local educational agencies.

21 " (2) For purposes of paragraph (1), the number of
22 children aged five to seventeen, inclusive, in any State
23 shall be determined by the Commissioner on the basis of the
24 most recent satisfactory data available to him.

25 " (d) (1) If the sums appropriated for any fiscal year

1 for making payments under this part are not sufficient to pay
2 in full the total amounts which all local educational agencies
3 are eligible to receive under this part for such fiscal year,
4 the maximum amounts which all such agencies are eligible to
5 receive under this part for such fiscal year shall be ratably
6 reduced. In case additional funds become available for mak-
7 ing such payments for any fiscal year during which the
8 preceding sentence is applicable, such reduced amounts
9 shall be increased on the same basis as they were reduced.

10 “(2) In the case of any fiscal year in which the maxi-
11 mum amounts for which local educational agencies are eli-
12 gible have been reduced under the first sentence of paragraph
13 (1), and in which additional funds have not been made
14 available to pay in full the total of such maximum amounts
15 under the last sentence of such paragraph, the State edu-
16 cational agency shall fix dates before which each local edu-
17 cational agency shall report to it on the amount of funds
18 available to the local educational agency, under the provisions
19 of subsection (b) (1) and paragraph (1), which it estimates
20 that it will expend in accordance with the provisions of this
21 part. The amounts so available to any local educational
22 agency, or any amount which would be available to any other
23 local educational agency if it were to submit an approvable
24 program, which the State educational agency determines will
25 not be used for the period of its availability, shall be available

1 for allocation to those local educational agencies, in the man-
2 ner provided in the last sentence of paragraph (1), which
3 the State educational agency determines will need additional
4 funds to carry out approved programs, except that no local
5 educational agency may receive an amount under this sen-
6 tence which, when added to the amount available to it under
7 paragraph (1), exceeds its allotment under subsection (b)
8 (1).".

9 (b) The heading for section 612 of the Act (20 U.S.C.
10 1412) is amended to read as follows:

11 "ALLOTMENT OF FUNDS; LIMITATION ON NUMBER OF
12 CHILDREN COUNTED; REDUCTIONS NECESSITATED BY
13 APPROPRIATIONS".

14 STATE PLAN REQUIREMENTS

15 SEC. 7. (a) Section 613 (a) of the Act (20 U.S.C.
16 1413 (a)) is amended—

17 (1) in paragraph (1) thereof, by striking out "paid
18 to the State"; and

19 (2) by striking out "and" at the end of paragraph
20 (12), by striking out the period at the end of paragraph
21 (13) and inserting in lieu thereof a semicolon, and by
22 adding at the end thereof the following new paragraphs:

23 "(14) provide that the State has a planning and
24 advisory panel, appointed by the Governor or other
25 chief executive officer of the State, composed of indi-

1 viduals involved in or concerned with the education of
2 handicapped children, including handicapped individuals,
3 teachers, parents or guardians of handicapped children,
4 State and local education officials, and administrators of
5 programs for handicapped children, which (A) advises
6 the State educational agency of unmet needs within the
7 State in the education of handicapped children; (B)
8 prescribes general policies under which the State edu-
9 cational agency will determine priorities within the
10 State for special education and related services for handi-
11 capped children; (C) comments publicly on any rules
12 or regulations proposed for issuance by the State regard-
13 ing the education of handicapped children and the pro-
14 cedures for distribution of funds under this part; and
15 (D) assists the State in developing and reporting such
16 data and evaluations as may assist the Commissioner in
17 the performance of his responsibilities under section 616;

18 “(15) provide that, on and after October 1, 1978,
19 such planning and advisory panel shall—

20 “(A) conduct periodic evaluations of educa-
21 tional programs throughout the State to determine
22 if all handicapped children within the State are
23 being provided full educational opportunities in ac-
24 cordance with the provisions of this part;

25 “(B) if noncompliance with the provisions of

1 this part is determined, notify the State educational
2 agency or the public educational agency which is
3 in noncompliance that such determination has been
4 made;

5 “(C) advise such agencies of the remedies to
6 noncompliance;

7 “(D) if noncompliance is not remedied within
8 a reasonable period of time, immediately notify the
9 Commissioner of noncompliance on the part of the
10 State educational agency, any local educational
11 agency, or any other public educational agency;

12 “(16) provide that programs and procedures will be
13 established to assure that funds received by the State or
14 any of its political subdivisions under any other Federal
15 program (including part A of title I of the Elementary
16 and Secondary Education Act of 1965 (20 U.S.C. 241c
17 et seq.); title III of the Elementary and Secondary
18 Education Act of 1965 (20 U.S.C. 841 et seq.) or its
19 successor authority; the Act of November 1, 1965
20 (Public Law 89-313; 79 Stat. 1158); the Vocational
21 Education Act of 1963 (Public Law 88-210; 77 Stat.
22 403); and the Vocational Education Amendments of
23 1968 (Public Law 90-576; 82 Stat. 1064)) which
24 provides assistance for the education of handicapped
25 children, will be utilized by the State, or any of its politi-

1 cal subdivisions, only in a manner consistent with the
2 goal of providing a free appropriate public education for
3 all handicapped children; and

4 " (17) provide that handicapped children in private
5 schools and facilities will be provided special education
6 and related services at no cost to their parents or guard-
7 ians, if such children are placed in or referred to such
8 schools or facilities as the means of carrying out the re-
9 quirements of this part or any other applicable law
10 requiring the provision of special education and related
11 services to all handicapped children within such State,
12 and that in all such instances the State educational
13 agency shall assure that such schools and facilities meet
14 standards which apply to public educational agencies
15 and that children so served have all the rights they would
16 have if served in public educational agencies."

17 (b) Section 618(d) (2) of the Act (20 U.S.C. 1418
18 (d) (2)) is amended—

19 (1) by inserting "(and to any local educational
20 agency affected by any failure described in subpara-
21 graph (B))" immediately after "for hearing to such
22 State agency";

23 (2) by striking out "substantially" in subpara-
24 graph (B) ;

25 (3) by inserting "or under the Federal programs

1 specified in subsection (a) (16) within his jurisdiction
2 and control" immediately after "to the State under this
3 part" each place it appears;

4 (4) by inserting at the end thereof the following
5 new sentence:

6 "Any State agency or local educational agency in receipt of
7 a notice pursuant to the first sentence of this paragraph
8 shall, by means of a public notice, take such measures as
9 may be necessary to bring the pendency of an action pur-
10 suant to this paragraph to the attention of the public within
11 the jurisdiction of such agency."

12 APPLICATIONS BY LOCAL EDUCATIONAL AGENCIES;

13 ADMINISTRATION; EVALUATION

14 SEC. 8. Part B of the Act (20 U.S.C. 1411 et seq.)
15 is amended by striking out section 614 and inserting in lieu
16 thereof the following new sections:

17 "APPLICATION

18 "SEC. 614. (a) A local educational agency which de-
19 sires to receive an allotment under this part for any fiscal
20 year may transmit an application for such allotment to the
21 appropriate State educational agency. Such application
22 shall—

23 "(1) provide satisfactory assurance that payments
24 under this part will be used for excess costs directly at-
25 tributable to programs which—

1 “(A) provide that all children residing within
2 the jurisdiction of the local educational agency who
3 are handicapped, regardless of the severity of their
4 handicap, and are in need of special education and
5 related services will be identified, located, and evalu-
6 ated, and provide for the inclusion of a practical
7 method of determining which children are currently
8 receiving needed special education and related serv-
9 ices and which children are not currently receiving
10 such education and services;

11 “(B) establish policies and procedures in ac-
12 cordance with detailed criteria prescribed by the
13 Commissioner to protect the confidentiality of data
14 and information developed or obtained under sub-
15 paragraph (A);

16 “(C) establish—

17 “(i) a goal of providing full educational
18 opportunities to all handicapped children, in-
19 cluding (I) programs and procedures for the
20 development and implementation of a compre-
21 hensive system of personnel development which
22 shall include the in-service training of general
23 and special educational, instructional, and sup-
24 port personnel, detailed procedures to assure

1 that all personnel necessary to carry out the
2 purposes of this part are appropriately and ade-
3 quately prepared and trained, and the develop-
4 ment of effective procedures for acquiring and
5 disseminating to teachers of, and administrators
6 of programs for, handicapped children signifi-
7 cant information derived from educational re-
8 search, demonstration, and similar projects, and
9 for adopting, where appropriate, promising ed-
10 ucational practices developed through such
11 projects; (ii) the provision of special educa-
12 tion and related services to handicapped chil-
13 dren, with first priority given to the provision
14 of such education and services to handicapped
15 children who are not receiving such education
16 and services, and second priority given to the
17 provision of such education and services to
18 handicapped children, within each disability,
19 with severe handicaps who are not receiving
20 adequate special education and related services;
21 (III) the maintenance of special facilities for
22 such children; (IV) the participation and con-
23 sultation of parents or guardians of such chil-
24 dren; and (V) to the maximum extent prac-

1 ticable, the provision of special services to
2 enable such children to participate in regular
3 educational programs;

4 “(ii) a detailed timetable for accomplishing
5 such a goal; and

6 “(iii) a description of the kind and number
7 of facilities, personnel, and services necessary to
8 meet such a goal;

9 “(2) provide satisfactory assurance that (A) the
10 control of funds provided under this part, and title to
11 property derived from such funds, shall be in a public
12 agency for the uses and purposes provided in this part,
13 and that a public agency will administer such funds and
14 property; (B) Federal funds expended for programs
15 under this part shall be used to pay only the excess costs
16 directly attributable to the education of handicapped
17 children, and shall also provide satisfactory assurance
18 that such funds shall be used to supplement and, to the
19 extent practicable, increase the level of State, local, and
20 private funds expended for the education of handicapped
21 children, and in no case to supplant such State, local,
22 and private funds; and (C) State and local funds will be
23 used in the school district of such local educational agency
24 to provide services in program areas which, taken as a
25 whole, are at least comparable to services being provided

1 in areas of such district which are not receiving funds
2 under this part;

3 “(3) set forth effective procedures, including pro-
4 visions for appropriate objective measurements of edu-
5 cational achievement, for evaluating at least annually
6 the effectiveness of the programs in meeting the special
7 educational needs of handicapped children;

8 “(4) (A) provide for making an annual report and
9 such other reports to the State educational agency, in
10 such form and containing such information (which, in
11 the case of reports relating to performance, is in ac-
12 cordance with specific performance criteria related to
13 program objectives), as may be reasonably necessary to
14 enable the State educational agency to perform its duties
15 under this part, including information relating to the
16 educational achievement of handicapped children par-
17 ticipating in programs carried out under this part; and

18 “(B) provide for keeping such records and afford
19 such access to such records as the State educational
20 agency may find necessary to assure the correctness and
21 verification of such reports;

22 “(5) provide for making the application and all
23 pertinent documents related to such application available
24 to parents and other members of the general public, and

1 provide that all evaluations and reports required under
2 paragraph (4) shall be public information;

3 “(6) provide satisfactory assurance that the local
4 educational agency has in effect a policy which assures
5 all handicapped children the right to a free appropriate
6 public education; and

7 “(7) provide satisfactory assurance that the local
8 educational agency will maintain an individualized edu-
9 cation program for each handicapped child, and will
10 review (at least annually) and revise its provisions,
11 whenever appropriate, in consultation with the parents
12 or guardians of the handicapped child.

13 “(b) A State educational agency shall approve any ap-
14 plication transmitted by a local educational agency under
15 subsection (a) if the State educational agency determines
16 that such application meets the requirements of subsection
17 (a), except that no such application may be approved until
18 the State plan submitted by such State educational agency
19 under section 613 (a) is approved by the Commissioner under
20 section 613 (c).

21 “(c) (1) A State educational agency may, for purposes
22 of the consideration and approval of applications under this
23 section, require local educational agencies to transmit a con-
24 solidated application for allotments if such State educational
25 agency determines that any individual application transmitted

1 by any such local educational agency would be disapproved
2 because such local educational agency would be unable to
3 establish and maintain programs of free appropriate public
4 education which meet the criteria established in subsection
5 (a) (1).

6 “(2) (A) In any case in which a consolidated applica-
7 tion of local educational agencies is approved by a State
8 educational agency under paragraph (1), the allotment
9 which such local educational agencies may receive shall be
10 equal to the sum of allotments to which each such local edu-
11 cational agency would be entitled under section 612 (b) (1)
12 if an individual application of any such local educational
13 agency had been approved.

14 “(B) Such local educational agencies shall exercise joint
15 control and decisionmaking authority with respect to the
16 administration and disbursement of allotments received under
17 subparagraph (A).

18 “(d) In any case in which a State educational agency
19 determines that a local educational agency—

20 “(1) is unable or unwilling to establish and main-
21 tain programs of free appropriate public education which
22 meet the criteria established in subsection (a) (1); or

23 “(2) is unable or unwilling to be consolidated with
24 other local educational agencies in order to establish and
25 maintain such programs;

1 the State educational agency may use the allotment which
2 would have been available to such local educational agency
3 to provide special education and related services directly to
4 handicapped children enrolled in the school district of such
5 local educational agency.

6 "ADMINISTRATION

7 "SEC. 615. (a) In carrying out his duties under this
8 part, the Commissioner shall—

9 "(1) cooperate with, and render all technical as-
10 sistance necessary (directly or by grant or contract) to,
11 the States in matters relating to the education of handi-
12 capped children and the execution of the provisions of
13 this part;

14 "(2) provide such short-term training programs
15 and institutes as may be necessary; and

16 "(3) disseminate information, and otherwise pro-
17 mote the education of all handicapped children within
18 the States.

19 "(h) As soon as practicable after the effective date of
20 this subsection, the Commissioner shall prescribe uniform
21 categories and accounting procedures to be utilized by State
22 educational agencies in submitting State plans under section
23 613 (a) in order to assure equity among the States.

"EVALUATION

1

2 "SEC. 616. (a) The Commissioner shall measure and
3 evaluate the impact of the program authorized under this
4 part and the effectiveness of State efforts to assure the free
5 appropriate public education of all handicapped children.

6 "(b) (1) In carrying out his responsibilities under this
7 part, the Commissioner shall (A) conduct directly, or by
8 grant or contract, such studies, investigations, and evaluations
9 as are necessary to assure effective implementation of this
10 part; and (B) provide for the evaluation of such programs
11 through (i) the development of effective methods and proce-
12 dures for evaluation; and (ii) conducting actual evaluation
13 studies designed to test the effectiveness of activities sup-
14 ported by financial assistance under this part.

15 "(2) In addition to his responsibilities under para-
16 graph (1), the Commissioner, through the National Center
17 for Education Statistics, shall provide to the appropriate com-
18 mittees of each House of the Congress and to the general
19 public, at least annually, and shall update at least annually,
20 the following information: (A) the number of handicapped
21 children in each of the States who require special educa-
22 tion and related services; (B) the number of handicapped
23 children in each of the States receiving a free appropriate

1 public education and the number of handicapped children
2 not receiving a free appropriate public education; (C) the
3 number of handicapped children in each of the States who
4 are participating in regular classroom settings, consistent with
5 the requirements of section 613 (a) (13) (B), and the num-
6 ber of children who have been placed in separate classes or
7 separate schooling, or who have been otherwise removed
8 from the regular education environment; (D) the number of
9 handicapped children residing in a public or private institu-
10 tional setting, in each of the States, who are receiving
11 a free appropriate public education, and the number of such
12 children residing in such settings not receiving a free ap-
13 propriate public education; (E) the amount of Federal,
14 State, and local expenditures, in each of the States, specifi-
15 cally allotted for special education and related services; and
16 (F) the number of personnel, by disability category, em-
17 ployed in the education of handicapped children, and the
18 estimated number of additional personnel needed to ade-
19 quately carry out the programs established pursuant to this
20 part in each of the States.”.

21 “(c) (1) Not later than one hundred and twenty days
22 after the close of each fiscal year, the Commissioner shall
23 transmit to the appropriate committees of each House of the
24 Congress a report on the progress being made toward the
25 provision of free appropriate public education to all handi-

1 capped children, including a detailed description of all
2 evaluation activities conducted under subsection (b).

3 “(2) Each such report shall include an evaluation of the
4 education programs provided in accordance with individual-
5 ized education programs, and shall include an evalua-
6 tion of the degree to which State and local educational
7 agencies meet instructional objectives and have complied
8 with the projected timetable for delivery of services.

9 “(3) The Commissioner shall also include in each such
10 report an analysis and evaluation of the effectiveness of pro-
11 cedures undertaken by the States to assure that handicapped
12 children receive special education and related services in the
13 least restrictive environment commensurate with their needs
14 and to improve programs of instruction for handicapped
15 children in day or residential facilities. Such analysis and
16 evaluation shall include any recommendations for change in
17 the provisions of this part, or any other Federal law providing
18 support for the education of handicapped children. In order
19 to carry out such analysis and evaluation, the Commissioner
20 may conduct a statistically valid survey for assessing the
21 effectiveness of individualized education programs.

22 “(d) The Commissioner may hire personnel necessary
23 to conduct data collection and evaluation activities required
24 by subsections (b) and (c) without regard to the provisions
25 of title 5, United States Code, relating to appointments in the

1 competitive service and without regard to chapter 51 and
2 subchapter III of chapter 53 of such title, relating to classifi-
3 cation and general schedule pay rates, except that no more
4 than twenty such personnel shall be employed at any time.

5 "RULES

6 "SEC. 617. The Commissioner shall, no later than one
7 hundred and twenty days after the effective date of this sec-
8 tion, prescribe and publish in the Federal Register such rules
9 as he considers necessary to carry out the provisions of this
10 part, as amended by the Education for All Handicapped
11 Children Act of 1975."

12 GRANTS FOR REMOVAL OF ARCHITECTURAL BARRIERS

13 SEC. 9. (a) Upon application by any State educational
14 agency or local educational agency the Commissioner of Edu-
15 cation may make grants to pay part or all of the cost of alter-
16 ing existing buildings and equipment in the same manner and
17 to the same extent as authorized by the Act of August 12,
18 1968 (Public Law 90-480; 82 Stat. 718).

19 (b) For the purposes of carrying out the provisions of
20 this section, there is authorized to be appropriated such sums
21 as may be necessary.

22 (c) For purposes of this section—

23 (1) the term "State educational agency" has the
24 meaning given it by section 602 (7) of the Education of
25 the Handicapped Act (20 U.S.C. 1402 (7)) ; and

1 (2) the term "local educational agency" has the
2 meaning given it by section 602 (8) of such Act (20
3 U.S.C. 1402 (8)).

4 CONGRESSIONAL DISAPPROVAL OF REGULATIONS

5 SEC. 10. Section 431 (d) (1) of the General Education
6 Provisions Act (20 U.S.C. 1232 (d) (1)) is amended by
7 adding at the end thereof the following new sentence: "Fail-
8 ure of the Congress to adopt such a concurrent resolution
9 with respect to any such standard, rule, regulation, or re-
10 quirement prescribed under any such Act, shall not repre-
11 sent, with respect to such standard, rule, regulation, or re-
12 quirement, an approval or finding of consistency with the
13 Act from which it derives its authority for any purpose, nor
14 shall such failure to adopt a concurrent resolution be con-
15 strued as evidence of an approval or finding of consistency
16 necessary to establish a prima facie case, or an inference or
17 presumption, in any judicial proceeding."

18 EFFECTIVE DATES

19 SEC. 11. (a) Except as provided in subsection (b) the
20 foregoing provisions of this Act shall take effect at the close
21 of June 30, 1975.

22 (b) The amendments made by sections 4, 5, 6, 7, and
23 8 shall take effect at the close of September 30, 1977.

Mr. BRADEMAs. The Chair is very pleased to welcome the distinguished Commissioner of Education, Mr. Terrel Bell, this morning to speak for the administration.

Mr. Bell, glad to have you with us.

[Prepared statement of Mr. Bell follows:]

PREPARED STATEMENT OF HON. T. H. BELL, U.S. COMMISSIONER OF EDUCATION,
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and Members of the Subcommittee, I am pleased to be with you this morning to discuss H. R. 7217, the "Education for All Handicapped Children Act of 1975." We very much appreciate the Subcommittee's rapid response to our request for a hearing on this bill before mark-up by the full Committee.

Let me begin my statement this morning by assuring you that we in HEW, like the Congress, are committed to the goal of making full equality of opportunity in the field of education available to all handicapped children.

As you know, the Federal effort in improving the capacity of State and local education agencies to provide educational services to the handicapped has increased rapidly in the past decade. Not only has the obligation level risen over ten times, but the scope of programs has broadened considerably. From a narrow program in 1964 centered primarily on the education of the deaf and blind, Office of Education efforts for education of the handicapped now support a broad measure of activities, including training for teachers and administrators; demonstration and dissemination of exemplary programs; identification and diagnosis of handicapped children; and direct aid to programs for the severely handicapped, deaf-blind, and children in State institutions.

In addition, the Office of Education is distributing, as required by Congress, \$100 million in FY 1975 under the provisions of Part B of the Education of the Handicapped Act, as amended in 1974 by P.L. 93-380. This provision offers funds to States for the initiation, expansion and improvement of their own special education programs.

Historically, the responsibility for the education of children has rested with the States. Roughly 80 percent of the total funding for education for the handicapped is provided by non-Federal agencies. Further, a substantial body of litigation continues to clarify the State role in the financing and administration of education, including the education of the handicapped. Accordingly, it is clear to us that the ultimate responsibility for education rests with the States, not with the Federal government.

While the Federal role in financing the education of the Nation's children remains secondary, prohibiting discrimination against handicapped children in education is a specific Federal responsibility. Legislation passed by the Congress in the past two years gives the Executive Branch authority to enforce both the elimination of all discrimination against the handicapped in Federally assisted programs and activities (Section 504 of the Vocational Rehabilitation Act of 1973) and specific requirements for approving State plans to provide special education (Sections 612 and 615 of the Education Amendments of 1974).

I want to emphasize that both the Department and the Office of Education are taking these responsibilities seriously. Regulations to insure State compliance with these statutes will be issued in the near future.

We have basic problems with several provisions of H. R. 7217 related to finance, administrative burden, Federal control, and quality of care for handicapped children.

Let me begin by listing our concerns for the care of children. This bill proposes to solve problems in the area of special education with remedies which have not yet been proven successful for all children. For example:

While individualized plans are being utilized in some States, there is no evaluation evidence to indicate that they are successful in overcoming the problems of communication between schools and the parents of handicapped children or in improving education.

The assumption that mainstreaming children always represents the most effective means of educating handicapped children has not yet been shown, and so care must be used in insisting that progress means more placements in regular education programs.

Second, we must question the proposed authorization levels and the allocation process contained in H. R. 7217.

We believe that the Subcommittee is being rather unrealistic in proposing legislation which would authorize nearly \$4 billion in LEA entitlements for the education of handicapped children at the same time that the Congress has appropriated \$100 million for this activity. This huge gap between promise and reality will falsely raise the expectations of the parents of millions of handicapped children.

In addition, funding formulas which are based on the number of served handicapped children, while creating incentives for States to attempt to serve more children, may also encourage States to classify many children as handicapped too freely in order to qualify for funding. While this problem is partially met by the 12 percent ceiling in the bill there may well be local education agencies which will too liberally identify children if they happen to have less than 12 percent who are handicapped.

Our current figures estimate that between 4 percent and 6 percent of the children in school are receiving special services because of various handicapping conditions. In their haste to increase by two or three times the number of handicapped children served it is very likely that education agencies will be encouraged to "label" children with mild, easily remedied, handicapping conditions in increasing numbers. The current reports of widespread mislabeling of (and consequent damage to) disadvantaged and bilingual children by labeling them as mentally retarded or emotionally disturbed must be carefully weighted in judging the merits of this approach to increased funding.

H.R. 72717 imposes greatly expanded Federal control in education. This bill requires local (in addition to State) education agencies to prepare and defend comprehensive plans for educating handicapped children, thereby extending Federal purview to 16,000 separate local entities. In addition, the proposed State advised Councils are given a mandate to prescribe general policies for special education. This adds a Federally-directed policy making board to the State education hierarchy. In order to compute excess costs as required by this law, State and local education agencies would be forced to adopt expensive uniform accounting procedures for special education. Finally, if the Commissioner is to evaluate education programs rationally, every individualized plan must fall within a uniform framework. A national plan based on national standards will inevitably emerge and be imposed on local education agencies. This is particularly discouraging because it is not yet clear whether such plans are viable and because a national plan by its very nature will tend to inhibit the individualism which this legislation appears designed to foster.

H.R. 7217 would also require what we perceive to be unnecessary and, in some cases, unrealistic administrative burdens, not only on the Department but on State and local education agencies as well. For example, while we certainly favor meetings between teachers, parents, and children, when appropriate, to discuss objectives and the process of education, this legislation would order the development of as many as 7 million individualized education programs, complete with evaluation procedures.

Similarly, while we agree that evaluation is critical to the long-term success of any education program, section 616 calls for the Commissioner to review this program on the basis of data which are simply unobtainable at the present time. Not only would a uniform accounting procedure for special education be an unwelcome Federal intrusion, it would be difficult to implement and cost several billion dollars. Further, we do not believe that it is meaningful to require 16,000 school districts to compile actual counts of handicapped children served on two occasions during the school year. In any case, at least one year's leadtime would be necessary in order to compile and verify such data.

Finally, since Federal funds can only be spent on excess costs, it is essential to define this term precisely. Does the total cost of a Braille textbook fit into the excess category or just that portion of the cost above that of a normal text? Should the Federal government pay the cost of the additional physical education instructor needed to adequately serve a small number of handicapped children? As presently constructed, we believe that the excess cost provisions of H.R. 7217 would be exceedingly difficult, if not impossible, to audit. Further, the excess cost provisions combined with the "no supplant" language may mean some school districts will not be able to use Federal funds, if for example their State law reimburses for a "comprehensive program."

It should also be recognized that this bill may create a situation where a significant percentage of any increased allocation may go, not to handicapped children, but to meet the administrative demands built into the proposal.

Mr. Chairman, while we continue to search for more conclusive answers to the problems inherent in educating the handicapped, we will concentrate our

attention on ensuring equal educational opportunity for all children. Specifically, we will continue to provide States with a broad range of technical assistance and trained personnel; we will publish regulations to enforce strong Federal nondiscrimination statutes; and we will provide States with approximately \$350 million in assistance through our existing programs in FY 1975.

Moreover, I would like to stress a simple fact which we all know, but which is an important element in this discussion. The amendments to the Education of the Handicapped Act contained in P.L. 93-380 have been in effect for less than ten months. That law not only changed the Part B formula but also mandated sweeping and far reaching provisions on full opportunity, due process, confidentiality, and nondiscriminatory testing. It is important to note that the deadline for State plans for FY 1975 was March 17. The Bureau of Education for the Handicapped is currently in the review process. More extensive plans for FY 1976 are not due until August 21. These plans must include procedures for child identification and maintenance of confidentiality, a detailed time table for accomplishing a goal of full educational opportunity, and a description of the kind and number of facilities, personnel, and services necessary to meet that goal. The Bureau is working closely with States to implement P.L. 93-380, but until the State plans which reflect these requirements have been analyzed, it is impossible to know whether States can effectively absorb additional Federal funds as proposed in this bill. We need time to assess the impact of the FY 1975 doubling of Part B monies on the States' education plans. We are concerned that this money not be used to supplant existing State expenditures in programs for the handicapped, and thus prefer a breathing period to evaluate the State response to this increase.

The Congress and the Executive Branch have worked cooperatively in the last decade on behalf of handicapped children. We believe that enacting legislation such as H.R. 7217, with its profound and undesirable expansion of Federal responsibilities, is not warranted. We feel that more careful analysis of the current roles played by the various governmental agencies at all levels is necessary. In concert with Congress, we should analyze all the Federal programs and examine in depth the question of all services for the handicapped.

Accordingly, we would recommend to the House Committee on Education and Labor that it not report H.R. 7217.

We thank you once again for your rapid consent to our appearance here this morning, Mr. Chairman. At this point, we would be pleased to answer any questions you may have.

STATEMENT OF HON. TERREL H. BELL, U.S. COMMISSIONER OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY RICHARD A. HASTINGS, ACTING DEPUTY ASSISTANT SECRETARY FOR LEGISLATION (EDUCATION), DHEW; AND EDWIN W. MARTIN, JR., DEPUTY COMMISSIONER, BUREAU OF EDUCATION FOR THE HANDICAPPED (OE)

Mr. BELL. Thank you, Mr. Chairman. I am pleased to be with you this morning to discuss H.R. 7217, the Education for All Handicapped Children Act of 1975. We very much appreciate the subcommittee's rapid response to our request for a hearing on this bill before markup by the full committee.

Let me begin my statement this morning by assuring you that we in HEW, like the Congress, are committed to the goal of making full equality of opportunity in the field of education available to all handicapped children.

As you know, the Federal effort in improving the capacity of State and local education agencies to provide educational services to the handicapped has increased rapidly in the past decade. Not only has the obligation level risen over 10 times, but the scope of programs has broadened considerably. From a narrow program in 1964 centered primarily on the education of the deaf and blind, Office of Education efforts for education of the handicapped now support a broad measure

of activities, including training for teachers and administrators, demonstration and dissemination of exemplary programs; identification and diagnosis of handicapped children; and direct aid to programs for the severely handicapped, deaf-blind, and children in State institutions.

In addition, the Office of Education is distributing, as required by Congress, \$100 million in fiscal year 1975 under the provisions of part B of the Education of the Handicapped Act, as amended in 1974 by Public Law 93-380. This provision offers funds to States for the initiation, expansion, and improvement of their own special education programs.

Historically, the responsibility for the education of children has rested with the States. Roughly 80 percent of the total funding for education for the handicapped is provided by non-Federal agencies. Further, a substantial body of litigation continues to clarify the State role in the financing and administration of education, including the education of the handicapped. Accordingly, it is clear to us that the ultimate responsibility for education rests with the States, not with the Federal Government.

While the Federal role in financing the education of the Nation's children remains secondary, prohibiting discrimination against handicapped children in education is a specific Federal responsibility. Legislation passed by the Congress in the past 2 years gives the executive branch authority to enforce both the elimination of all discrimination against the handicapped in federally assisted programs and activities—section 504 of the Vocational Rehabilitation Act of 1973—and specific requirements for approving State plans to provide special education—sections 612 and 615 of the Education Amendments of 1974—now referred to as Public Law 93-830.

I want to emphasize that both the Department and the Office of Education are taking these responsibilities seriously. Regulations to insure State compliance with these statutes will be issued in the near future.

We have basic problems with several provisions of H.R. 7217 related to finance, administrative burden, Federal control, and quality of care for handicapped children.

Let me begin, if I may, by listing our concerns for the care of children. This bill proposes to solve problems in the area of special education with remedies which have not yet been proven successful for all children.

For example:

While individualized plans are being utilized in some States, there is no evaluation evidence to indicate that they are successful in overcoming the problems of communication between schools and the parents of handicapped children or in improving education.

The assumption that mainstreaming children always represents the most effective means of educating handicapped children has not yet been shown, and so care must be used in insisting that progress means more placements in regular education programs.

Second, we must question the proposed authorization levels and the allocation process contained in H.R. 7217.

We believe that the subcommittee is being a bit unrealistic in proposing legislation which would authorize nearly \$4 billion in LEA entitlements for the education of handicapped children at the same time that the Congress has appropriated \$100 million for this activity. This huge gap between promise and reality will falsely raise the expectations of the parents of millions of handicapped children.

In addition, funding formulas which are based on the number of served handicapped children, while creating incentives for States to attempt to serve more children, may also encourage States to classify many children as handicapped too freely in order to qualify for funding. While this problem is partially met by the 12-percent ceiling in the bill there may well be local education agencies which will too liberally identify children if they happen to have less than 12 percent who are handicapped.

Our current figures estimate that between 4 and 6 percent of the children in school are receiving special services because of various handicapping conditions. In their haste to increase by two or three times the number of handicapped children served it is very likely that education agencies will be encouraged to "label" children with mild, easily remedied, handicapping conditions in increasing numbers. The current reports of widespread mislabeling of—and consequent damage to—disadvantaged and bilingual children by labeling them as mentally retarded or emotionally disturbed must be carefully weighed in judging the merits of this approach to increased funding.

H.R. 7217 imposed greatly expanded Federal control in education. This bill requires local—in addition to State—education agencies to prepare and defend comprehensive plans for educating handicapped children, thereby extending Federal purview to 16,000 separate local entities.

In addition, the proposed State advisory councils are given a mandate to prescribe general policies for special education. This adds a federally directed policymaking board to the State education hierarchy. In order to compute excess costs as required by this law, State and local education agencies would be forced to adopt expensive uniform accounting procedures for special education.

Finally, if the Commissioner is to evaluate education programs rationally, every individualized plan must fall within a uniform framework. A national plan based on national standards will inevitably emerge and be imposed on local education agencies. This is particularly discouraging because it is not yet clear whether such plans are viable and because a national plan by its very nature will tend to inhibit the individualism which this legislation appears designed to foster.

H.R. 7217 would also require what we perceive to be unnecessary and, in some cases, unrealistic administrative burdens, not only on the Department but on State and local education agencies as well. For example, while we certainly favor meetings between teachers, parents, and children, when appropriate, to discuss objectives and the process of education, this legislation would order the development of as many as seven million individualized education programs, complete with evaluation procedures.

Similarly, while we agree that evaluation is critical to the long-term success of any education program, section 616 calls for the Commissioner to review this program on the basis of data which are simply

unobtainable at the present time. Not only would a uniform accounting procedure for special education be an unwelcome Federal intrusion, it would be difficult to implement and it would, we estimate, cost several billion dollars.

Further, we do not believe that it is meaningful to require 16,000 school districts to compile actual counts of handicapped children served on two occasions during the school year. In any case, at least 1 year's leadtime would be necessary in order to compile and verify such data.

Finally, since Federal funds can only be spent on excess costs, it is essential to define this term precisely. Does the total cost of a Braille textbook fit into the excess category or just that portion of the cost above that of a normal text? Should the Federal Government pay the cost of the additional physical education instructor needed to adequately serve a small number of handicapped children? As presently constructed, we believe that the excess cost provisions of H.R. 7217 would be exceedingly difficult, if not impossible, to audit. Further, the excess cost provisions combined with the "no supplant" language may mean some school districts will not be able to use Federal funds, if, for example, their State law reimburses for a "comprehensive program."

It should also be recognized that this bill may create a situation where a significant percentage of any increased allocation may go, not to handicapped children, but to meet the administrative demands built into the proposal.

Mr. Chairman, while we continue to search for more conclusive answers to the problems inherent in educating the handicapped, we will concentrate our attention on insuring equal education opportunity for all children. Specifically, we will continue to provide States with a broad range of technical assistance and trained personnel; we will publish regulations to enforce strong Federal nondiscrimination statutes; and we will provide States with approximately \$350 million in assistance through our existing programs in fiscal year 1975.

Moreover, I would like to stress a simple fact which we all know, but which is an important element in this discussion. The amendments to the Education of the Handicapped Act contained in Public Law 93-380 have been in effect for less than 10 months. That law not only changed the part B formula but also mandated sweeping and far-reaching provisions on full opportunity, due process, confidentiality, and nondiscriminatory testing. It is important to note that the deadline for State plans for fiscal year 1975 was March 17.

The Bureau of Education for the Handicapped is currently in the review process. More extensive plans for fiscal year 1976 are not due until August 21. These plans must include procedures for child identification and maintenance of confidentiality, a detailed timetable for accomplishing a goal of full education opportunity, and a description of the kind and number of facilities, personnel, and services necessary to meet that goal.

The Bureau is working closely with States to implement Public Law 93-380, but until the State plans which reflect these requirements have been analyzed, it is impossible to know whether States can effectively absorb additional Federal funds as proposed in this bill.

We need time to assess the impact of the fiscal year 1975 doubling of part B moneys on the States' education plans. We are concerned that this money not be used to supplant existing State expenditures in programs for the handicapped, and thus prefer a breathing period to evaluate the State response to this increase.

The Congress and the executive branch have worked cooperatively in the last decade on behalf of handicapped children. We believe that enacting legislation such as H.R. 7217, with its profound and undesirable expansion of Federal responsibilities, is not warranted. We feel that more careful analysis of the current roles played by the various governmental agencies at all levels is necessary. In concert with Congress, we should analyze all the Federal programs and examine in depth the question of all services for the handicapped.

Accordingly, we would recommend to the House Committee on Education and Labor that it not report H.R. 7217.

We thank you once again for your rapid consent to our appearance here this morning, Mr. Chairman. At this point Dr. Edwin Martin, who is Deputy Commissioner of the Bureau of the Handicapped, and Mr. Richard Hastings, who is Acting Deputy Assistant Secretary for Legislation, and I would be happy to respond to questions.

Mr. BRADEMAS. Thank you very much, Mr. Bell.

Mr. Bell, do you know how long this subcommittee has been working on this legislation?

Mr. BELL. I understand it has been for some time, certainly before I came here which is about a year ago this month.

Mr. BRADEMAS. We are in our third year of consideration of this legislation. I must say I find it really quite extraordinary that the Commissioner of Education should appear before this subcommittee in mid-1975 with a statement that is so overwhelmingly negative with almost no constructive suggestions with regard to the program which any rational person would appreciate has been under very serious consideration by this subcommittee over a protracted period of time.

Now, the reason we have taken such a long time on this legislation, Mr. Bell, is that we know it is a complex problem. You are a busy man and I don't know if you have had time to read the hearings on this legislation, but I think if you had read those hearings you would appreciate that this subcommittee, on both sides of the aisle, has been making a good faith effort to try to come to grips with the dilemma that is represented by the outrageous failure on the part of the wealthiest country in the world to provide a tolerable education for millions of handicapped children.

When you come in and talk about breathing space, I wonder what you are going to say to the handicapped children in this country and their families. Now, I have sat on this subcommittee for a number of years and I went through the fight on vocational rehabilitation. I have gone through the experience of fighting with the present administration and its predecessor in their efforts to kill and cripple a program we have had for 50 years in this country to provide opportunities for handicapped adults to make their way in our society. I have seen how the administration has sought to destroy that program and dismantle it. It is all in the public record.

Everybody in the country who pays attention to this knows it, and for you to come here this morning and try to persuade us—at least try to persuade me—that there is a really serious interest on the part of this administration, and to quote you, “a commitment to the goal of making full equality of opportunity in the field of education available to all handicapped children,” I must say mystifies me.

Now, you only ask for what, \$50 million? Isn't that right?

Mr. BELL. Yes. In the basic formula grant, that is correct.

Mr. BRADEMAs. I think you are only asking for \$50 million for fiscal 1976.

Mr. BELL. That is correct, Mr. Chairman.

Mr. BRADEMAs. And you are even asking for a rescission of the increased \$50 million that Congress has voted; is that not correct?

Mr. BELL. That is also correct.

Mr. BRADEMAs. Do you remember what Attorney General Mitchell said? “Don't pay attention to what we say, pay attention to what we do.”

I must say it is very clear to me that there is not much serious interest at all on the part of the Ford administration in the education of handicapped children. I don't like to say that because I have worked very closely with Republicans on this legislation and hope to continue to do so. I think there is a commitment on the part of the Republicans on the subcommittee to do something about education for handicapped children. I see no serious commitment on the part of this administration.

Anybody who pays attention to these matters knows that there has been an increasing incidence of important decisions holding that handicapped children have a constitutional right to an education in this country. If you are an educator, if that is your business, all you have to do is read what comes over your desk. You ought to know that. You ought to also know that it takes more money to educate handicapped children than nonhandicapped children, does it not?

Mr. BELL. Yes. I am fully aware of that, Mr. Chairman.

Mr. BRADEMAs. When you make statements as you do on page 2 that “The ultimate responsibility for education rests with the States, not with the Federal Government,” who is disagreeing with you? The very same statement was made 10 years ago when I was on this committee in opposition on the part of some to our passage of the Elementary and Secondary Education Act. You remember that, don't you, Mr. Bell?

Mr. BELL. I certainly do, Mr. Chairman.

Mr. BRADEMAs. If we embraced the philosophy represented by that statement in your prepared statement this morning, we would not have the Elementary and Secondary Education Act in this country because that is the same sort of line we were fed even then.

You say in your statement, “Prohibiting discrimination against handicapped children in education is a specific Federal responsibility.”

What does it mean for you to say, “We in the Federal Government have a responsibility to prohibit discrimination against handicapped children in education”? You don't want to do anything about it. What does that mean?

It is almost saying we care deeply, of course, but we don't want to expend any money.

I am also surprised by what you say on page 3 of your statement in which you throw cold water on our effort in this legislation to create incentives for States to attempt to serve more children. We used to hear a lot from people in this administration about encouraging greater action on the part of the States. Well, that is exactly what this bill does because it makes a direct link between the numbers of handicapped children being served by the States and the amount of Federal funds that would be provided to assist in that effort.

You seek to classify many children as handicapped too freely in order to qualify for money seems to be more of a debater's point than to be taken seriously because that is why we put the 12-percent ceiling on the bill. Given the obvious evidence before this committee and before the country of overwhelming numbers of handicapped children who are not today receiving education appropriate for their needs, for you to express the profound apprehension that States or local school agencies may too liberally identify children if they happen to have less than 12 percent who are handicapped seems to me to be, if I may say so in all candor—and I am obviously speaking to you in all candor—obviously misguided.

There is this huge collection of handicapped children. We might spend some on those who are not handicapped, we should not spend any money at all.

Now, you have also expressed reservations about the requirements in the bill for individualized plans and you say that they represent a burden. It may be the case that they do and it may be the case that they should because the handicapped children are now enduring the burden of not receiving an education. We want to be sure that moneys provided in this legislation go to handicapped children to help them. I think when you express concern about the language in the bill calling for evaluation and you make the point that the data are simply non-obtainable at the present time, you are not telling this subcommittee anything they don't know.

Why do you think we have been working on this bill for 3 years? In part, Mr. Bell, it is because we have not had much serious data coming out of your Department. You have no idea how we have had to struggle and fight. Dr. Martin has been cooperative. He has given us everything he has had, but believe me it is not a very pretty picture when you see the incredible deficiency of data that can be taken seriously by serious legislators seeking to cope with a very serious problem in this society. I don't know what is so outrageous about uniform data.

As you know, I am a strong supporter of the National Institute of Education which is an area in which we are allies instead of adversaries as we appear to be in this situation.

One of the reasons is that I have not been impressed by—nor has my colleague, I think, Mr. Quie—when we have sought to get accurate data, accurate information, accurate analyses about the facts in education. This runs throughout the educational spectrum.

You are familiar with the problem we had in 1972 writing the higher education bill because we could not get accurate data, so I should have thought you would have welcomed the effort which this legislation represents to stimulate the development of forms of collecting data which are more uniform and which ought therefore to make it possible for all of us at every level to do an effective job.

In like fashion, when you referred to the excess cost problem I share with you that concern. Indeed, that may be one of the constructive suggestions in your testimony. It is difficult for us to know. Again, if you follow the testimony here you would have seen the enormous difficulty that we on this subcommittee have encountered in trying to work with the excess costs concept.

Now, this is a deficiency not just in your Department—and here I am not so critical of you as I am of the education community in general that has not given itself adequately to developing some ways and means for us to understand costs in respect to the education of handicapped children. The same point indeed was made in 1972 when we tried to write the program for the higher education bill and it was because the university community could not help us that we had to go ahead and devise some methods ourselves.

Mr. Bell, I am sure you are aware that everything I have said is not directed at you personally, for I have great regard for your ability and your integrity, but it is directed and is meant to be directed at what I in all candor perceive to be an abandonment on the part of the administration of my dear friend and valued former colleague in the House of Representatives, Gerald Ford, of the importance of providing improved educational opportunities for handicapped children in this country.

Now, I want to give you an opportunity to have back at me.

Mr. BELL. I would appreciate that, Mr. Chairman.

Mr. BRADEMAs. I also would like to have one specific question in addition to these observations and that is to ask that you break down the figure on page 6 of your statement in which you say that you will provide States with approximately \$350 million in assistance through our existing programs in fiscal 1975.

Aside from those few reservations, Mr. Bell, it is a fine statement.

Mr. BELL. Mr. Chairman, I would like to begin by saying that I would be concerned if any educator that knows anything about the problems of American education failed to recognize that probably one of the biggest problems right now in the American educational system is its failure to adequately meet the educational needs of handicapped children. I want to be on record as Commissioner of Education as recognizing that this is a great failure.

This failure is related, I think, to some other points that I want to make—and I have emphasized this in opportunities that I have had to address State legislative groups and State officials. I do not think that the States have yet developed an adequate system of school finance. An adequate system of school finance gives weight for the educational overburden, including the education of handicapped children. From my own experience in my own home State which is 35th in the ranking of the 50 States in per capita income, I am proud to say that notwithstanding its lack of wealth my own home State for years and years and years has had a very substantial program for education of the handicapped.

I point that out to indicate that I think that the States, if they would make the commitment, have the capacity for educating handicapped children. We feel in the administration that our efforts should be concentrated upon persuading, not compelling, the States to meet their responsibility. The education of handicapped children ought to be left like it is, and I know it has gone a long time but there has been

considerable momentum because of the action in the courts over the past few years.

So I would emphasize that when a State with as low a per capita income as the State I came from before I came here can and adequately has educated their handicapped children for years and years, that there is very little reason why other States cannot and should not do this.

Another point that we were making is that we think that there is a strong element of compulsion in Public Law 93-380, and as we receive the State plans required in 93-380 that are now coming in we find commitments.

I would like the committee to recognize that the law—and it is a good law—requires the States to submit a plan and in that plan to indicate a time through their plan when they will meet the needs of handicapped children and meet them adequately.

Further, as we look at the enormous fiscal problems that this Government is struggling with, at the huge deficit that we are facing at this time, I am certain that President Ford is greatly concerned. I have spoken to many Governors who have talked about the surpluses they have. As we look at the two levels of Government, as we look at where the responsibility historically has been, it is our position that this is primarily a State responsibility with Federal capacity building, Federal encouragement and now Federal persuasion under Public Law 93-380.

I certainly would not want the members of this subcommittee to feel that the Commissioner of Education is not committed and has not recognized the great problem in the education of handicapped children.

Another feature of Public Law 93-380 is that States are urged to develop comprehensive school finance programs. That is in section 842 of the new act. We have just published the regulations on this. This will provide more opportunity for us to work in the States and to encourage them through this program.

So our prime concern is there. We think that the basic idea of the Federal Government pushing harder for education of handicapped children is a good one but we don't think in view of the enormous fiscal deficits that we are now running and comparing our financial circumstance to those of the Federal Government that we are going to be able to justify putting this added burden on the Federal budget when it justifiably belongs on the States.

Just a couple other points, Mr. Chairman, in responding and then if we have missed some of your points we will need to come back to them.

We believe that the bill is quite restrictive. My own opinion is that if this bill is enacted, the Congress is going to be proscribing some awkward language for the States to handle administratively. What will happen, for example, in a State like my own State and Mr. Quie's State of Minnesota and others that are now funding adequately for handicapped children? Will they be penalized for efforts that they made down through the years?

The language that prohibits supplanting gets into this. I question very much, Mr. Chairman, that the Congress of the United States ought to be as proscriptive as you are in individualized plans and the detail that you impose upon States in this bill. If the bill is accepted on this level of funding, I would still suggest as sincerely as I know how

that some of the provisions in this act are too proscriptive and I would add that to a generalization that I think much of the Federal education legislation is getting more and more proscriptive and is beginning to tie the hands of the States.

So I would want to emphasize that point. If I may, I will call on Dr. Martin to answer some of the questions about some other specifics and respond to your comments.

Mr. BRADENAS. Thank you very much, Mr. Bell.

I may say that in light of my rather sharp criticism of your statement I do want the record to make clear, so as not to embarrass you, that your associates have been very helpful to us in an informal way giving us their professional judgment on some of the proposals that we have been considering while having made clear that they were not doing so representing the administration's position—and we are very grateful for that.

I just would make one point before calling on Mr. Cornell and that is that I appreciate the thrust of your point, and that we are troubled about making promises that are too great. This is the point that Mr. Quie has called our attention to from time to time and there are some arguments to be made for that point.

I think there are also some arguments to be made for the other proposition which is to say put some judgments in the bill that represent the best judgment of the authorizing committee which is considering this legislation.

Because I think everyone—not everyone but most people who follow these matters closely—understands that the Appropriations Committee is not always going to adopt what the authorizing committee recommends in terms of funding.

So I think that it is not as if there is some vast conspiracy on the part of the authorizing committee to disguise the facts. On the contrary, we are trying to be open and above board. I think there is something to be said for both sides of that argument.

Mr. Cornell.

Mr. CORNELL. You mentioned about the court decisions requiring that all of the handicapped children be provided with education. It seems to me that in many instances such things as individualized plans would be absolutely essential.

While it is certainly true the primary responsibility for the job belongs to the State, we are told that there are millions of handicapped children who are not being provided for, and it seems to me that there certainly is justification for Federal support to encourage States to undertake such programs.

Mr. BELL. Mr. Cornell is justified. I do feel, as I said before, that the Congress in this bill is getting into educational methodology as we talk about and as we mandate on the Federal level by Federal law some of the aspects here.

Another point I would like to make as I interpret the bill, the Advisory Council in this bill is clothed with binding administrative authority and certain methodology items and I would object as a local and State administrator to having advisory bodies with binding authority over local boards of education and local school administrators.

These are some of the concerns that I have about the bill as well as the overall argument that this committee may or may not accept that

the financing is primarily a State responsibility with technical assistance and research and development capacity building being a Federal responsibility. It gets back to the fundamental question of what is the Federal role in education and what is the State role.

Mr. MARTIN. If I may add a comment about the individual plans. I think that the idea of planning for a handicapped child, or for that matter a nonhandicapped child, in terms of what might be the objectives for that child is the concept that we favor and, in fact, have encouraged. I think what we are concerned with is how to administer those individual plans with regard to a Federal law.

Let me give you an example of concern I have. If two things were to happen in the individual plans—at least two—I think they might become troublesome. One is if they become too reliant at this stage of our information about them on so-called objective measures. For example, the whole history of education—social, psychological, research in general—has been to try to measure things that you could measure. The result was that sometimes we ignored important dimensions of a process and stuck instead to those things which yielded to test and measurement technology.

Now, in an individual plan for a handicapped child what should be in it, for example? Should it include his arithmetic proficiency or her spelling proficiency, or how much of a gain they might make on reading, and should those things be measured by a standard national test? For example, would that be the criteria for success?

If you have a fourth grade retarded child, say he picks up 3 months or 6 months on such and such a reading achievement test. What about the other dimensions; for example, how well he gets along or she gets along with the boys and girls in the class? Frequently a major goal of special education would be to help the handicapped child be able to interact with his peers rather than the academic achievements.

How about the feeling of self-worth, and this is important for when a handicapped child sees that other children are able to do things that he can't do, he may be able to learn faster or perform better, athletically or speak more clearly, and so forth, and so on.

So any special education program by nature involves itself with not just how much a person might get on a test but how they feel about themselves, how they relate to others; and this is quite a complex endeavor.

So one of the things I have been concerned about is that we not rush into the idea of a highly structured measurable plan which would then tend to tip us away from these subjective and personal areas into just focusing on something that we could get down with pencil and paper.

The second thing that may become a problem—say page 27 of the bill where the committee is talking about the evaluation on lines 3, 4, 5, 6, and 7—is in the significance of to “include an evaluation of the degree to which State and local educational agencies meet instructional objectives,” now that is a global concept. It says we want to see whether this local education agency meets instructional objectives; and how are we going to do that? We are going to look back now to these individual plans. That is the evaluation of the educational programs with individual plans. So basically what that paragraph calls for is for us to review the Sacramento School District on the basis of the success of the individual plans in meeting instructional objectives.

Now, obviously, if we are really going to do that, we have to have those plans tied down fairly carefully and it has to be measurable and they have to be appropriate; otherwise we are not going to be able to say whether or not such a school or local educational agency meets its instructional objectives.

Mr. MILLER. Would you yield for a moment?

Mr. MARTIN. Yes.

Mr. MILLER. I think we are really asking for some degree of accountability by the Commissioner that he is in fact taking a look at what is going on in the States. I think your interpretation is a little off the path. I think it is nice from the point of objective, but if we are going to continue to carry out the intent of this bill with that kind of involvement in the Federal Treasury, I think we ought to have some statement by the Commissioner to the fact that something is going on. I don't think it calls for an individual plan by individual plan review, but it certainly calls for a statement by the Commissioner that he is taking a look at what is going on in the Sacramento School District in regards to that effort.

Mr. MARTIN. Well, I don't think you and I differ, Mr. Miller. What I am trying to do is respond to Chairman Brademas' call to provide you with some suggestions that might be useful.

I think we do feel there is an accountability. Now, you raised the question I am not sure everyone would agree to, and that is whether the U.S. Commissioner—we ought to be directly involved with how well things are going in Sacramento, or whether we should see what kinds of procedures the State of California has for seeing how well things are going in Sacramento. Those are really two slightly different points. I think we would feel we would rather look at the kinds of procedures, the kind of standards the kinds of activities the State was doing rather than trying to get to the various local school districts.

If the committee could make clear at least that in the development of individual plans that what they were doing was encouraging a measure of careful planning for children, what they were doing was encouraging the sense of plan of accountability, and at the same time avoid tying in the whole question of the adequacy of a special education program, that would be most helpful. If a study were to point out at this stage in time that there was not anything happening in the individual programs, we really would not know whether we were designing individual programs wrong, or whether we were measuring the wrong things.

The Westinghouse evaluation of Head Start decided that nothing was happening in the Head Start because they used IQ tests rather than a multiple number of measures of activities that were going on.

That is my point; and, I do think that you should make a little bit more clear that you are not trying to get us into that box of measuring.

Mr. BELL. I think it is important to point out, if I may, that we are spending \$2 billion a year in title I on this kind of control. As Ed has said, in an effort to be helpful on the bill we think that you really ought to take a look at that. We think if you talk to some State and local education officials that they would agree with the point that we are trying to make here; that if we are not careful, the Congress is going to evolve into a super school board in proscribing methodology in fact—indeed in getting into educational psychology in this bill in

some aspects. I just think as large and as diverse as the educational system is that that is typical of the sort of things we ought to keep out of Federal legislation.

Mr. CORNELL. Is this true of special education because of the necessity of individualized plans?

Mr. MARTIN. I think it is a good idea, Mr. Cornell, but there is no data now as to what should be in them, how they work. We are studying in Texas, through a large research study, some of the results of special education which includes some individual planning.

One of the things that is emerging as suggested in our conversations with thousands of teachers, is that the individualized plans are not worth much and will not stand alone. A plan that is developed at the beginning of the year and put into effect will not necessarily yield much fruit in December or in March or in June. What has been necessary is for the regular classroom teacher, if she has a handicapped child in her care, to work closely with the special education teacher or the other teacher, to get together in a monthly meeting for swapping notes: "This is what we are going to try to do this month," and that kind of thing.

My feeling is if we were to literally try and evaluate State and local programs on the basis of this and be able to say: "How is California doing compared to Wisconsin or Indiana," we would have to impose some research point of view.

I don't think the committee really wants to get into that, but that is the literal way you would have to proceed: To set up a standard plan so we can accumulate this data and find the measuring instruments. We would have to be able to say California is doing better than New York based on the same instance.

What I am really saying is that you want the concept of individual plan. We will continue a large part of the evaluation and we will continue to try and learn about individual plans—what ought to be in them, what dimensions, how do you measure them, how they work and so forth and so on; but we will not impose it on every school district in the country, and certainly not in any federally proscribed way.

Mr. CORNELL. I notice Mr. Bell says the States have these surpluses. That certainly is not true in the State of Wisconsin. We have a comparatively—I would say—a good educational program, but there is a lot to be done in the education of the handicapped. Wisconsin has made a very great tax effort and we really need further assistance from the Federal Government. I think it is extremely necessary in this field because, as I said, the figures indicate that about 1 million receive nothing. For about 3 million education is inadequate.

Mr. BELL. I would recognize that. I know that all of the States don't have the fiscal strength that I was talking about.

The point I was also trying to make is that when I talked about a school finance formula, the States need to develop an adequate formula of finance. There should be an integral system where the various parts are balanced and where the State equalization works out related to below the educational overburden. For example, Mr. Cornell, at Milwaukee with a lot of inner-city children—you have more handicapped, a lot of low income, disadvantaged children. We are going to have a higher percentage of the total number of children handicapped and I am concerned about how you handle that nationwide.

As I read the bill, it appears to me that what you would say is—let's take the State of Ohio. Let's say that Cleveland has the largest number of handicapped children and if they submit a request which adds up to 12 percent of their student population as handicapped and then when they have grantmanship as some districts play it, let's say that Shaker Heights, suburban Cleveland, puts in a request for 17 percent handicapped and then Columbus puts in a request for 15 percent.

As we read the law you say that if it is over 12 percent then the State education agency under our supervision then reduces that pro rata. Well, this is not going to recognize these enormous variations like the ones that I am just pointing out and so forth. You have to reduce them all 25 percent, so you cut Cleveland who asked for only 12 percent, 25 percent. You cut Shaker Heights, who was in this theoretical situation aggressive and asked for 17 percent which ostensibly may have been far in excess of their needs, and cut them 25 percent.

I have worked as a school officer on the State level where I have dealt with the superintendents of schools who try to work the systems to get all the money they can, and when it is Federal money they want to get all they can and they will work this game quite heavily.

I think you are setting this up the way the law is written at the present time and that just furthers my argument that the best thing we can do in the Federal role in education is to try to encourage and further the States' finance systems, the totally integrated system, and let the people in the State of Wisconsin determine the methodology for many of these things I think we are getting into in this bill.

Mr. CORNELL. Thank you, Mr. Chairman.

Mr. BRADENAS. Mr. Quie.

Mr. QUIE. Thank you, Mr. Chairman.

First, I want to state my appreciation, Mr. Bell, for your giving us your statement. The fact that it is controversial comes not only from our criticism, of which you heard quite a bit prior to coming here today.

I think we have to minimize quite clearly what we have done because our intention is to provide educational opportunities for handicapped children. There is also a substantial question to what extent the Federal Government ought to impose its will, although we have information that all handicapped children are receiving the Federal programs.

Now, you mentioned the Vocational Rehabilitation Act, "... shall solely by reason of his handicap be excluded from the participation and be denied the benefits of or be subjected to discrimination of the activity provided by Federal financial assistance."

Mr. BELL. Yes.

Mr. QUIE. We have picked up the word "appropriate" in this bill. Sometimes one raises the criticism that individuals are brought into a program where the funds may not be appropriate for them. This will give you some latitude to make that determination. Do you think it is wise to use the word "appropriate" as we have in the bill?

Mr. BELL. I feel that the word "appropriate" may not be appropriate.

Mr. QUIE. The section on discrimination is also in section 904, and it says that no person in the United States shall be denied admission to any course of study by the recipient of Federal financial assistance.

Now, do you construe that to mean any program in education for the blind?

Mr. BELL. I surely do and I think that is very inclusive language. The point I have been making, Mr. Quie, is that I think we have just over the last couple of years stronger compelling persuasion on its face than we have ever had before, and we see a great deal of momentum moving forward. Certainly if there has ever been a group of students that had their self-rights violated for years it has been the handicapped, and on that point I don't argue a bit with the strong point that the chairman was making.

Mr. QUIE. Do you think it would be wise if we would very specifically—since there are small parts of various questions on the legislation—spell out that no handicapped person shall be denied an opportunity for appropriate special education just as the courts have done and as we have done here in this legislation?

Mr. BELL. I think that would be appropriate. Even on language problems the Supreme Court has found in the case of a youngster who has a language difficulty that his rights as a citizen entitle him to appropriate instruction to overcome his language difficulty. So I think it is very plain from all the litigation that has gone on in the State and Federal courts that we are fast coming down on this whole matter on handicapped children, and certainly it has been overdue.

Mr. QUIE. I ask the question on the part of the sanctions of withholding funds. Now, if we make this a part of title VI, should we then withhold funds under part B of title VI, withhold all funds for the handicapped? I notice that for the fiscal year 1975 part B is \$100 million. All Federal funds for the handicapped amount to \$353,298,000 or, should we do it as some civil rights organizations and withhold all Federal funds for education?

Mr. BELL. I see no reason why we should discriminate insofar as the handicapped are concerned. Section 504 regulations provide for the cutoff funds. Maybe, Ed, you could comment on that further, if you will.

Mr. MARTIN. I think any time you talk about cutting off funds you are talking about a serious problem. On the revenue side it is very difficult to see what kind of middle line is proposed, since we are really committed to educate all handicapped children. If we see it as a matter of right, and if we feel as though it must be done, then given some reasonable point in time it seems to me you can't sort of half way do it. I would say that when the Congress makes that public law pronouncement, that this is going to be the public law of the country, they should have available whatever sanction is important to make it meaningful.

Mr. QUIE. Do you think it is right to cut off all education funds for a State or a school district?

Mr. MARTIN. I frankly would not do that, Mr. Quie. I would not limit the cutoff of funds to simply handicapped programs. First of all, I hope we will not have to do it. I hope the progress will be quick enough and sufficient enough so that there will be no failure to comply, but if such a failure did occur, it would seem to me to be perverse to cut off only the handicapped funds.

The net effect of that would be for the handicapped children to suffer. So if you look at a line of reasoning where the State would not serve its handicapped children and then the cutoff affected only those funds, you would have the effect of the rest of the school system going on, undisturbed and the handicapped children suffering. I think that might have a backward effect.

If the Congress is serious enough about this, it would seem to me that you would want to cut off all Federal funds so the handicapped children would not bear that burden disproportionately.

Mr. QUIE. Now, we have heard the estimate that about 60 percent of the handicapped young people receive special education and 40 percent are not touched at all. Do you agree with those estimates and, if so, have you identified where those 40 percent are?

Mr. MARTIN. Well, the way the 60 and 40 percent figures are arrived at, Mr. Quie, is by the estimate route rather than by the head-counting route. We have over a number of years accumulated various bits and pieces of information from the school districts and from various kinds of surveys; it is an enormously complex problem. The National Institutes of Health does a health survey, they identify a great many more children than we ever thought of being hearing impaired from the school point of view, and it is very hard to know where the educational relevance comes in.

Similarly, there are problems with the emotionally disturbed. The National Institute of Mental Health has estimated as many as 15 percent of school aged children need some mental health support during their school years or during their adolescence. We talked in our figure about 2 or 3 percent of the children as being seriously emotionally disturbed so that there is a good bit of judgment involved and a good bit of estimating involved in these numbers.

Now, the way the served and unserved populations come about is ordinarily by implying an overall figure of 10 or 12 percent against the school population and subtracting from that the numbers of children served, thereby leaving those unserved. In some States there have been State laws and court orders and other things which demanded that the States go and find children who were out of school altogether, and these findings make our estimate of a half million such children seem a pretty reasonable one.

Our schools all top our waiting lists. Most of the other children are in school but they represent classes of children who are either not getting special education—for example, very little special education is done for junior and senior high school aged children, very little placement in vocational education programs, or only very small numbers of children compared to the national incidence figures are participating.

So I think that the difference between, let's say, 4 million children now served and the 6½ million, depending on the age, is primarily children of school age who are in school who are receiving substandard programs, children with learning disabilities or others.

Mr. QUIE. I share that same feeling. It is not working terribly well in there.

Mr. MARTIN. In summary, the largest number of children, Mr. Quie, are in school unserved. They are composed, I would think, of children with learning problems, children with speech and hearing problems, children with mild to moderate emotional disturbance, and then a class of children, all of whom are junior and senior high school

aged, who are getting very little programing at all and who then fall into a kind of social promotion track or dropout track and represent a considerable problem.

Mr. QUIE. How do you account for the vast difference between the estimates that you come up with and those of the Bureau of Educational Handicapped and NCES? Some of the figures I have had were from Indiana and they said they have 75,000 and BEA says they have 87,000. Kentucky NCES says they have 30,928 and BEA says 31,493—very close. They come to New York and NCES says they have 91,000 and you say 263,000.

Mr. BRADEMAS. Would the gentleman make clear what the NCES is?

Mr. QUIE. National Center for Educational Statistics.

Mr. MARTIN. Are those handicapped children served, Mr. Quie, those numbers you are reading to me?

Mr. QUIE. No, these are the estimates of numbers out there.

Mr. MARTIN. Well, NCES a year or two ago did a small sample survey as part of a larger data collection instrument. The first year they really ran this through, their results came as something of a surprise to us. For example, that sample evidently didn't reflect the title VI resources because it only estimated about half the number of children whom we knew were participating in the Federal programs so we have not from the Bureau's point of view felt that was a satisfactory response. They did it under high standards of professional scrutiny but there are some factors that simply don't obtain.

General school statistical officers simply were not fully aware of the handicapped children, or they ran into the same problem that Chairman Brademas mentioned a while ago that they have not kept very accurate accounts.

For example, many States count only the children they directly reimburse up to the level of their own kinds of formulas and don't count children that might be locally supported. I am not sure of the answer to that, but anything less than our figures is probably an underestimate because almost all of the new figures we are getting from the States are much higher than the 10 percent figure, and I think it is because of the recognition of children having problems that were previously overlooked.

Mr. QUIE. I can understand that the difference was 10 percent or less or even 15 percent or less, but when you get up over 50 percent or around 50 percent, it seems to me somebody should have noticed there was a discrepancy.

Mr. MARTIN. We urged them not to put them out.

Mr. QUIE. In your estimate are there some school districts in the Nation that are serving close to 100 percent of the handicapped?

Mr. MARTIN. Yes, Mr. Quie, I think there are. I think there are probably a good number, especially those that are highly developed. Now, what we are going to get into is the appropriate word again; there is probably no perfect program where every child gets all that he or she might get. For example, even the very excellent program in the suburb might not have a full vocational educational option available to youngsters, and they certainly might not have every pre-school youngster. That, by the way, is one of the reasons I have had a little problem with the excess cost.

I think they might work against district of that kind having the place to spend the money. I think that might not happen the first year or so but as you got into the kinds of figures that you feel are authorized you could find a situation where a local school district had a good program in what we call a full reimbursement program and, so especially for the children they have enrolled, they have 100 percent funding.

My question is what are they going to do with the Federal funds? You might say, well, they go to work on that and start some preschool programs and they will do those things up to a point but the excess cost provisions get extremely complex in, let's say, the preschool area.

Supposing there is no State or local reimbursement for preschool planning or it is against the State law, where will they get the first \$1 thousand to trigger off the program in order to use the excess cost for the preschool program? I think, probably, if you follow this line of reasoning that the excess cost function will be tremendously difficult.

Again, it doesn't mean that we are going to have to tell everybody what they can and what they cannot do, which would be imposing an accounting system on the school districts; and, secondly, that the "no supplant" language may get troublesome to you if in the fact the Congress were to try to appropriate the kinds of sums that we were appropriating against. There really would have to be some provision for the States to do something with that money. Perhaps you want to say that the Federal shares would represent 25 percent of the cost of the program or in some other way control the activity.

Mr. QUIE. What type of school district tends to furnish 100 percent or provide for 100 percent of the handicapped children? I am not talking about whether they apply for 100 percent of the needs. It is pretty hard over to determine that. But at least they are approaching 10 percent of the handicapped students in the program.

Mr. MARTIN. I honestly don't know the answer to that question in a scientific way. It comes to us from different sources and I could just give you my sort of clinical impression of that answer. Certainly well developed school districts have put large amounts of money in special education programs. So I would assume that your more prosperous districts, wherever they occur, would tend toward what you are saying, but that is not the only group. Sometimes there are, let's say, small communities, individual cities that have had longstanding programs. The pattern that comes to me is quite a diverse one, and different people are saying they think they have all their children.

Sometimes a small school district has a few thousand children in it, or even less, and feels that it can identify its children and has them all in the program. Then there are other places where I have heard quite the opposite. A State director told me the other day that there was county after county that had absolutely no program for handicapped children at all.

Mr. BELL. I think, Mr. Quie, in places where the school finance formula is on the State level regardless of the school system you can be sure they will come—certainly it was that way where I came from. So there was an incentive here to do that and I think you will find that.

Now, another thing, as you talked about the difference in data, you will find the different States have different definitions of what a

handicapped child is. Some are more generous and some are very, very conservative. So from the State and the local district level as we put out a Federal definition of what a handicapped child is, we are going to have to keep two different sets of accountings on them, and I think this is part of the problem that has been difficult for NCES.

The national prevalence figures when you just estimate based upon a lot of data describe a large portion of the population as mentally retarded on the basis of intelligence measures.

So you have national prevalence figures, one State's definition which differs from another, the statistical process sampling, say 3 percent, and then making a projection for the rest of them. All of this can account for a considerable amount of variation in the data and then I would just have to say down right careless reporting in filling out forms and handing them in, and it seems to me that is the biggest problem.

Mr. QUIN. If you have a State that will pay 100 percent of the additional cost for the handicapped children in special education, whose fault is it that some students are not served in the State?

Mr. BELL. It would be the locals' fault. They would not be doing what the law required and what the law gave the incentive for. So it would be the locals' fault.

Mr. QUIN. If we were to get the choice between going 100 percent as we have before funding through the State, let the State distribute the money as the way or go through the flow-through formula as we have here, which way would we get the fastest and greatest expansion and greatest opportunity for handicapped children where they are not in custody of the service?

The Senate is now talking about doing 60-40 and we are proposing to change the State to a flow through. What is your estimate of the way you watch it operate if you had to select either/or?

Mr. MARTIN. I think there is a chain of logic that goes along with the position in your bill right now. I believe, in the final analysis, you want the local school districts to perform these services; you are routing the money toward the local school districts; you are asking them to develop a plan in quite considerable detail for doing that, and you are really reimbursing directly to them.

The problem comes in with the reality of where things are now; for example, you might find in a given State some school districts that are doing quite a good job.

Around Washington, D.C., you find a good program while in Appalachia or on the Eastern Shore there may not be such good programs. If you give the money on the basis of where the children are now being served, you will be putting a lot of money into counties where there is already a lot of money being spent in special education.

The fact is that you will not be putting a lot of money into the rural Appalachian poor counties. They will have to come up with their own first either through State money or otherwise. So it is kind of a tradeoff, I would say.

Now, if you stay the way we are right now, the Congress until last year has a pretty good system which I think was improved by the amendments last year. Last year you targeted the money on the unserved children. You said if they spend it on the children, spend it on the more severely handicapped children. I think that is a good

device for getting the money out to where the children are without regard to whether that tends to reimburse people who have not done too well, so it is a real question of tradeoffs.

Now, from the child's point of view if you get the money to that child other determinants are not so important. That is why the Commissioner keeps harping back. There is a fair base and equitable base to start from in the first place.

I think really that is the decision, Mr. Quie, that is facing the committee: If you go on an LEA basis you are going to pretty much have a get-richer program. If you go the other way, you are going to pretty much have the money tracking to areas that have not done so well in the past and that undoubtedly raised other people's concerns.

Mr. QUIE. Which would you have done?

Mr. MARTIN. I would have gone roughly half and half, I guess. [Laughter.]

I would have given——

Mr. QUIE. No, I asked you if you would only go one way, not down the middle.

Mr. BELL. I think if you are going one way it has to be with the States. I just would not equivocate on that a bit. Having said that, I know there are some State departments of education that are very much stronger than others so I know that any way you go that you are going to have problems. One of the things about dealing with the school districts right now is the huge number that we have, and in this age we ought to be consolidating a number of these districts. We have an enormous amount of very, very small districts and I think the more you encourage the States to organize themselves administratively and establish the financial ability on that level and then work through the States, that we are going to be doing the right thing, and I think that is so with respect to this approach. I would point out that it is not a bit uncommon as we talk about equality of opportunity. It is not a bit uncommon to find in one State where a school district will have three times as much money per child as one just over the border by the accident of whatever property tax wealth is available. Until we do something about that, we are going to continue to have a big problem.

Here Ed Martin is pointing out that 80 percent of the children are in 20 percent of the school districts and I do not think that would surprise anyone. There are large numbers of very, very small school systems and we ought to be doing some things in the way of leadership and adequacy and persuasion to get reform and to get the State legislatures to do something about organizing the school districts the way they ought to be.

Mr. QUIE. Since you have to administer this program, how do you read our priority for those who presently are being served? Do you read it to be priority of people within the school district or do you look at it as priority within the State where in reality some school districts are already serving their students and shifting to the school districts that are not.

Mr. MARTIN. I have not read it that latter way, Mr. Quie. That may be a good way to read it.

Mr. QUIE. I have not read it the latter way.

Mr. MARTIN. No, you would be hard pressed to take it away from them and give it to somebody else.

Mr. QUIE. You mentioned the large school district. I found in Minnesota some of the small school districts don't have enough handicaps so that it would pay for them to provide a program so therefore they work out an arrangement—in fact the State helps them work out an arrangement so that they can send their children to another school district.

Do you feel, as you read this legislation, that there is ample authority for that, and do you feel that it would come automatically to the student from the school districts that have difficulty or do you think it ought to be a stronger State role to bring that about?

Mr. MARTIN. Well, I have just read this as an administrator and we have not had the General Counsel say this because of their involvement in that in the regulation, but that language as to coordinating or grouping together school districts is a little bit unclear to us. We are not sure how well it covers existing intermediate units and so forth and so on.

I, as a nonlawyer, can't tell you whether it has all of the clarity and the flexibility, but it does certainly raise a question in our minds as to whether or not any existing intermediate district is adequately covered or whether they would have to follow something different.

Mr. QUIE. Then the other part of the question, who is the most effective in bringing about the improving of the school district for a program for the handicapped? Is it the State or do the school districts tend to do that on their own?

Mr. BELL. The States are the ones that should do that, and to the extent that we can strengthen the States to do that job, I think we are going to be moving in the direction that we ought to go.

Mr. QUIE. Now, of the criticism that you raised against this bill—for instance, you mentioned dealing with 16,000 separate local community entities. Don't you deal now with 16,000 local entities?

Mr. BELL. No, we deal through the States. The funding goes to the States and the States have a stewardship responsibility.

Mr. QUIE. Entitlement in title I?

Mr. BELL. Yes, there is an entitlement but the responsibility to sign on and to supervise, the responsibility to approve the LEA, place considerable enforcement responsibilities on the States and much of that is quite conspicuous by its absence at the present time.

I think that this bill can be improved quite a bit from where it is. I think that is an understatement.

Mr. QUIE. So are you saying that even if we choose to go the flow-through method that here we ought to strengthen the role as we did in title I.

Mr. BELL. Yes; I really feel that and I know that is a controversial issue. I have a theory that in the brief time that I have been here that those Congressmen and Senators that have strong State departments of education feel a lot better about this than those that don't have the strong State departments of education, and my concern is that we don't strengthen them by bypassing them and sooner or later we have to see that all of these State education agencies get better than they are, and in that regard I keep harping at it but there is surely a lot of work for the State legislatures to do yet.

Mr. BRADEMAs. Would you yield?

Mr. QUIE. Yes.

Mr. BRADENAS. As you are aware Mr. Bell, the bill under consideration provides in respect to the flow-through to local school districts a veto in the hands of the State department of education. You are aware of that?

Mr. BELL. Yes; I am aware of that.

Mr. BRADENAS. Therefore, I am trying to understand as I listen to your response to Mr. Quie just what is it specifically you are suggesting—that none of the moneys go to the local school districts and that all of the moneys go to the State as distinguished from the present proposal whereby the moneys can go to the local school districts or to consolidations of school districts with the veto on the school district's plan by the State? What is it specifically you are proposing?

Mr. BELL. Well, one point is the great difference in taxable wealth that some States now have or that some districts now have in the absence of equalization, and if the State has the authority to allocate these funds and if it were written into the law so that they had to, we could correct that inequity as we are trying to do.

I think that all legislation that this Congress writes ought to have incentives in it, not disincentives, but incentives to persuade the States to do those things that follow good fundamental principles, and this is just one of them. I think the procedure right now, Mr. Chairman, for pro rata reducing the amount that they apply for is a fundamental fallacy in here and it is extremely difficult to write a piece of legislation that fits 50 different and separate State education systems, and for that reason the less proscriptiveness you get into—the more authority that you give for the State to help the funds, the better off you are.

Mr. QUIE. I don't understand the pro rata part that you raise. There is a provision in the bill for a pro rata reduction.

Mr. BELL. Yes; but we think that is a problem. Now, let me talk to that and perhaps I misinterpret it, but I checked with my colleagues and we all seemed to interpret it the same way.

It seems that the State itself cannot allocate, cannot claim Federal funds in excess of 12 percent of the total student population being declared and categorized as handicapped.

Now, that puts a ceiling that you apparently want but then after that I don't think you adequately allow for differences in different types of school districts that have varying percentages of handicapped children. The number of handicapped children are not distributed equally in the suburbs or in the inner city area.

As I interpret it—and I would have to, you know, admit that at this point it needs more intensive study, but I think that if a district applies for an excessive number of handicapped children, then you reduce them all accordingly. You should not tie our hands in that instance.

Mr. MILLER. Would you point to the section of our bill?

Mr. HASTINGS. What the Commissioner is talking about is the provision that the 12 percent limitation is on the SEA rather than the LEA. It is in the LEA application section, I believe.

Mr. BELL. We ought to allow the SEA to go in and allow some differential where there are higher concentrations of handicapped children.

Mr. Quie, take inner city Minneapolis and the suburbs of Minneapolis. We will find the rate of percentage of handicapped in the urban

center greater than out in the suburbs and the Minnesota State Department of Education ought to be empowered to allow for that and to compensate for it. You are going to be putting an inequity in here. In my opinion, it ought to go further than this. Maybe you won't want to go this far, but I think there ought to be some compensation permitted where there are gross inequities in the amount of money available in one district to another or the rich get richer as you allow excess costs one to another.

Mr. QUIN. There is no problem so long as you are below the 12 percent; is that right?

Mr. BELL. Yes.

Mr. QUIN. Now, you are saying when you reach the 12-percent gap that means that somebody has to be cut out within a State.

Mr. BELL. The law says you prorate it. I reduce all of it.

Mr. HASTINGS. It is on page 1, C-11.

Mr. BELL. That in itself is inequitable.

Mr. QUIN. I think that is a valid point.

Mr. BELL. It is my responsibility, Mr. Chairman, if I can repeat this, to try to persuade you to abandon the bill entirely and after that to try to make it a better bill. I don't want to go back and report to my superior and indicate that I have not made that point strongly.

Mr. QUIN. I think you have made that point.

Let me ask you—

Mr. BELL. The point I am making is that as I talk about how to make it a better bill. I don't want that other point—

Mr. HASTINGS. Technical assistance does not imply consent.

Mr. QUIN. OMB won't even listen.

Mr. BELL. There are times when some feel that as educators we don't mourn enough the fact that sometimes you don't reduce our funds when we ask you to. I want to be dedicated on the points I am making on it.

Mr. QUIN. Let me ask you about the funds. Dr. Martin is speaking here of information to make your determination as to how many students are handicapped. You tend to refer to organizations. Do you have enough money to make the analysis of who actually is handicapped out there?

Mr. MARTIN. Well—

Mr. QUIN. Do you have authority? Both authority and funds?

Mr. MARTIN. This is really one of the unknown things that this legislation brings forward, Mr. Quie. We have not had to identify handicapped children for administrative purposes before. The States had to identify children who were in fact handicapped. Monitoring to date does not indicate any widespread pattern of use of the funds in identifying children, but we never had to count children one by one for an entitlement and in fact very few school districts in the country have to do that either.

They tend to cluster them in a group. There is a whole range of different patterns. What that means is that we are going to have to get into a very interesting set of relationships on how to count the children. I don't know that we have to define the handicapped children ourselves on a Federal basis. If we do, we will have some problem with State law, I imagine, since States will have different definitions. But, at the very least, we are going to have to be very clear how people ought to do it and how they define them.

Now, we did some telephone surveying last week to get a little feeling for how many children there are in different districts, and we discovered that some States are saying they have 17 percent and 25 percent and others 6 percent, and so forth. It is obvious to us that they are counting differently, and so there is going to be a considerable problem here.

Mr. QUIE. Some are 19 percent, some are 6 percent?

Mr. MARTIN. It usually depends on the definition of one or more classes of who is handicapped. For example, California uses a term called the educational handicaps and includes many children who are disabled and lots of people in a generic definition.

Mr. QUIE. Have you spent any money to try to find out why those differences exist? Do you have a clear picture of it?

Mr. MARTIN. Yes and no. No; we have not done national incidence or prevalence surveys with the exception of one experience years ago, and that experience led us to believe that it was not a situation which yielded itself meaningfully to a Federal survey. We concluded it was better done by a local district, or perhaps even on a substate regional district to discover the actual children who were there and the logistical problems with handicapped kids and so forth. It is just really not a feasible approach.

Mr. QUIE. So you don't want any more authority to do that?

Mr. MARTIN. I think what we are going to have to do is have sufficient authority to do various things, but I know we did not put any money in for that. Sooner or later that will be a problem. If you give us a massive million dollar study to conduct and no authority to do it, we will be in a real bind.

Mr. QUIE. Let me ask you about your criticism of the individualized plan. We have something similar to this in vocational rehab. Now, why won't it work as well for educating handicapped children?

Mr. MARTIN. First of all, I don't know if it is working well in rehabilitation, but it may well be. That is a researchable and a value judgment. The main reason I think it won't work in handicapped is that we don't know much about this. We don't know who should be in them, whether they should lend themselves to academic work, whether they should be more multifaceted. We don't want to be in the position of having to impose from my office a common form on one of these 8 million children and their teachers and then keep track of it. And we won't have to do that as long as you don't take too seriously the effectiveness of this bill on the basis of how well those plans work.

I think what you want to do is to encourage the development of the individual plan, and to break out the evaluation of the program from the language which is now in the bill which more or less requires it to be evaluated on the basis of how well it is done. We can't do that right now.

Mr. QUIE. So what you are saying is that the language we have really imposes responsibility on you and that you would move toward the national standard plan in order to be evaluated?

Mr. MARTIN. Well, if you ask us a clear and seemingly simple question, you say we want to know in a sophisticated way how well the children are doing in reaching the objectives of those plans. You immediately make an evaluation problem which requires some consistency of cross plans in both design and measurement, and the

only way to meet that on an interstate basis would be to use—as we would in any research program—the same tools, the same criteria, the same kind of a look. Then we say, here is the national sample, there is the next place, and we are all measuring and so forth and so on, and here are the results making such and such a progress.

I don't think really Congress wants to do that and that is one of the reasons I have been talking about this today to make sure of what was in our mind: a kind of an encouragement of development at the local level to get them to understand what they should do, to obtain a sense of accountability; but, not going as far as for us to have to make a report to the Congress each year on them, because if you do that then we have to get into the Federal plans.

Mr. MILLER. I assume we have the language. We would have a problem with the language on page 27, lines roughly 3 through 5.

Mr. MARTIN. Yes.

Mr. MILLER. You have a problem on the language, "State and local educational agencies."

Mr. MARTIN. That is the joker. OK. How are you going to do that? How am I going to do that with all these children?

Mr. MILLER. Can you cut out the first part for purposes of argument. We cut out the first part in respect to the section No. 2 which now reads "Shall include an evaluation of the degree to which State and local educational agencies meet instruction objectives and have complied with the timing of the services." I assume we are talking about the intent of this bill and coming up with individualized plans. I assume what we are asking here is that we at some point ask the Commissioner, "Have you looked behind the State plans that have been submitted to you" because my understanding is that most of the States have not complied with that. Is that correct?

Mr. MARTIN. No; that is not correct.

Mr. MILLER. That is not correct?

Mr. MARTIN. No.

Mr. MILLER. Have they met the deadline?

Mr. MARTIN. Absolutely. We have, by the way, two mandates. We have never had the problem with States; it has been rare among the States. We have had an annual projected activity form which has given us a very good communication channel.

Mr. MILLER. You have fully evaluated those plans?

Mr. MARTIN. Yes, each year. I would be happy to show you what they look like. Although there are such plans, I am aware of them, we have not had that particular kind of model of a State saying to us that our first priority for northern California would be the historic approach—so much money on that. State money in southern California would be something. There are priority listings rather than projects, but they are very useful and they have encouraged some planning across Federal agencies because we have insisted that the States get them signed off by the title III officials directly and so forth.

Now, what I think you just said leads me to understand where I might have had a different assumption than you. When you say, "meet instructional objectives," I am thinking about how do I sum up the individual objectives for a child? It is important to me to realize, Mr. Miller, this much arithmetic and that much spelling, et cetera, is what that language is meant for.

Mr. MILLER. I think we are looking to see that, if the local district is certified by a State as being involved in individualized instruction and the State certifies that fact to the Federal Government, at some point we have to be able to put our finger on somebody—and it may be our own agency—and say, "I want certification of the fact that this is going on at the local level, not a giant school board but some kind of random sampling by you" so that you can say, yes, that these, in fact, are advised.

I worry sometimes because of the squeeze the school districts find themselves in. I lend myself to a conspiracy at that point, but I am very concerned that if we make a determination that this is the direction to go, in fact that is the direction it goes.

Mr. MARTIN. I think you have the evaluation language you seek on page 25 in paragraph (b). That is where I would recommend you stop your paragraph. That will do what you want. They will provide for the evaluation of such a program, the development models and evaluation studies, and test of the effectiveness—that is what you are getting at—of activities supported by financial assistance of which it is a part. That will give you each of the points you have made particularly in the conducting of the design test, the effectiveness.

Mr. MILLER. I am glad you like that language.

Mr. MARTIN. What?

Mr. MILLER. I guess I also say I think that the difference between that language and what is contained in section 2 is direct accountability by the Commissioner which is different from conducting evaluating studies to the Congress. You are saying to the Congress this is what the programs are doing at this point.

Mr. MARTIN. I don't think there is much problem of what you want do.

There are two kinds of—

Mr. MILLER. You say this is not working or you ought not to be making these changes.

Mr. MARTIN. The major problem, and I say it is possible to do without, is to try to measure the individual objectives in each of these plans. I think what you do want is to see that each of the projects funded has a reasonable evaluation which allows us to sit down and look at it and see that it is worthwhile. We would both like to have that kind of evaluation process going on. I don't feel that we ought to go from our office to the 16,000 school districts and 7 million kids, but I think we should provide a format for that kind of evaluation so we can then monitor through the States and be in a position where we can say, why weren't you out there in any particular district telling them what to do.

Mr. MILLER. If I may impose on the gentleman's time for one more minute. I assume your judgment in the first part of section 2 on page 27 also goes for roughly lines 18 through 21 on the same page, page 27.

Mr. MARTIN. Yes, and I think you ought to be cautious of the fact about the first plan. I think that you may want to take a look at that objective criteria in the evaluation procedures because that is important. I don't think you want to place such a premium on encouraging the States to measure what is not important; that is sometimes the code word for objective criteria, and it means we have to get the standardized test.

So I think that we want to move ahead in this area. I would very much like to see people do it but I don't want to get into a box and hear how good they are, and I certainly don't want to impose on anybody.

Mr. MILER. Can I ask you hypothetically how are we going to do this program?

Mr. MARTIN. Well, I think you have done it in 16(b). I don't know what more you need than that, but it may be, I am assuming, by the way, that some of the data you called for in paragraph 2 becomes available, with the exception of the State and local and Federal expenditures, specifically out of the special education which is line 13. You have to stop what they are doing and do something else just to get that number. I don't think we want to do that, but I think you have got in (b) a very good thing.

First you say "conduct directly the evaluations that are necessary to assure limitation" and that gets to what you are talking about. That gets at the kind of programing, that gets at the enforcement of the local education agency provisions, that gets at the "least restrictive," to the extent that it is appropriate language.

Then you go on to (b) and you say "Provide for the evaluation of the program", that is, the programs you are authorizing in this act. You do that, first, through the development of methods or procedures which is very important because that is the individual plan; and, second, conduct actual studies and that is why you want to conduct the actual studies—to test the effectiveness under this act. That is what you are really looking for.

Mr. BRADEMAB. Mr. Quie, do you have any other questions?

Mr. QUIE. Yes.

I would like to ask you about the problems you say you have with the excess costs. Why would it be necessary to look at each item? Since you mentioned the textbook, could you not look at the total of the budget? We provide what the normal cost would be to the local school districts. For all determination you would not have to do that for them nor would the State impose its will on the local school district. All you would have to make certain of is that the amount spent per child in the local school district be the first made available for handicapped children and the Federal share would be only a percentage of and above that.

Mr. MARTIN. Well, I understand, Mr. Quie, in order to be equitable across the country you would have to—I think the rough figures used now of the State average—divide by the number of children, and I think you can, if you want to, apply that against each local district. You could do it that way a little more simply.

Mr. QUIE. We are very specific that you would not apply that against the school district which makes that determination.

Mr. MARTIN. What I am saying is in order to tell you with some sureness whether or not this program is funding only excess costs, I have got to know what the basic costs are. Now, the question is how am I going to find that out? Am I going to use a State average cost which now is generated in Minnesota and say: OK, Rochester is spending that much and so is Minneapolis and so is everywhere else?"

Mr. QUIE. School districts.

Mr. MARTIN. That is where the rub comes in. The local school districts don't generate that by the same criteria, it depends on State reimbursement formula for them. Sometimes they might put in

transportation, other times they don't. How do you prorate it? They may have building costs prorated, you know, like when you have a building deteriorate over a period of time.

Mr. QUIE. What difference does that make?

Mr. MARTIN. It means if you are doing it differently than the next community is doing it, it may be to your advantage to do it differently. You might be charging off things that they don't and so your average costs have a different meaning.

Mr. QUIE. Let's use an example. One includes their building costs and the other one does not.

Mr. MARTIN. Yes.

Mr. QUIE. Now, that will not have any effect on excess costs because the building costs won't be counted as expenditures for the handicapped.

Mr. MARTIN. But the amount that they say they are spending per pupil will.

Mr. QUIE. Let's suppose one school district does not count that and I assume they will count busing and it turns out that the average expenditure in one school district is \$600 per child and in another school district it is \$1,200 per child. Now, what difference does it make so long as all of the cost that they use is to get for the expenditure on the handicapped?

Mr. MARTIN. When they start a new program—suppose they are going to use a new class for mentally retarded children and they would like to use the Federal money to do that. How much do they have to put up; \$600 or \$1,200 per child by the way they are counting? I assume they would have to have some equitable way of counting so that it would be fair and we would not be in a position of saying: "Since your accounting is in the way that nobody else does it, you have to put up \$1,200 a child before you get to the excess costs." They are counting it a different way and they have \$600.

Mr. QUIE. Both of them are making the same expenditure. I expect what they will do is drop out the expenditures that normally are dropped out like building costs. However, if they propose to spend some of the money for busing the handicapped and don't have busing, then there is a cost for the normal expenditure and you would disallow that.

Mr. MARTIN. Well, I guess the logic of what I am trying to say here is that in order to assure that the school districts were being treated fairly, and were treating themselves fairly, they all have to follow the same rules. If they didn't, in some way, some would harm themselves by exaggerating their average cost and therefore having to put more money into their local contribution, which will concern us.

In other words, if there were some who were making an average low by excluding certain kinds of things, then they could begin spending the Federal money at the local level.

This is how you must use the ground rules. You must count these things in, you must count those things out, and then you get into the nonhandicapped children who ride on the bus with handicapped children. The Transportation Act, I think, becomes an extraordinary complex way to run a program. I think there are several alternatives.

Mr. QUIE. If you were going to charge or use some of the Federal money for transportation, it could only be for those costs that exceed the normal cost. Now, if you need some extra help for that child—

Mr. MARTIN. But you see what mathematical manipulation would have to go on to make that simple thing? In figuring excess costs for transportation you have some times when the schoolbus goes down the road and picks up 15 nonhandicapped children and five handicapped children and that is their pattern. You have to count how many kinds are on the bus who are not handicapped. In other words, not everything is laid out in a simple way. I don't think they need that kind of precise cost accounting, certainly they don't need it for Federal programs and they don't need it for State programs.

Mr. BELL. The point I would like to make is the one you made a minute ago, Mr. Quie, when you said suppose one district is spending \$600 a child and another district is spending \$1,200. I think the Congress ought to come to grips with that. I think in every piece of legislation that we write on the Federal level we ought to give incentives for reform on the State level. Now, I think that could be put into this bill in a way that would correct another inequity, it is the biggest inequity in American education right now.

Mr. QUIE. I don't want the handicapped to hear that.

Mr. BELL. Pardon?

Mr. QUIE. I don't want the handicapped to hear that.

Mr. BELL. Supposing there was only a small incentive in here, a small recognition in that regard. You say, however, the State has a good equalization program. That proves that they are already taking care of those impact studies and therefore you may put the money into the State coffers.

What about the State now that already has a good finance program for the handicapped? What you are going to do is penalize them for doing a good job and the recalcitrant ones are going to get off scott free. This is what I would like to persuade you to do differently.

Mr. BRADEMAS. Would you yield?

Mr. QUIE. Yes.

Mr. BRADEMAS. You seem to be so terribly troubled by this particular inequity, Mr. Commissioner, to which you have been referring—the matter of spending on education being so diverse. I understand your point.

Mr. BELL. Yes.

Mr. BRADEMAS. You seem to be terribly exercised by that and want this frail craft that we are trying to float here to do something about improving the education of handicapped children, to bear the burden. I believe Mr. Quie is making this point of coping with that problem and inequity in the problem. I am reminded of—

Mr. BELL. Mr. Chairman, this is my whole point.

Mr. BRADEMAS. I thought that was what you were saying.

Mr. BELL. I am saying that there are some States now that are taking care of their handicapped children in their school finance program.

Mr. BRADEMAS. In what program?

Mr. BELL. In their school finance program. You are.

Mr. BRADEMAS. What States are taking care of their handicapped children?

Mr. BELL. In the State of Utah and the State of Minnesota and you can name some others that are doing a considerable job in this area.

Mr. BRADEMAs. Those are the States you say are taking care of the needs of handicapped children. Now, you say they are doing a considerable job. I don't know what those words mean.

Mr. BELL. By "taking care of" I would say, Mr. Brademas, by and large they are educating the great percentage of the handicapped children, well over 90 percent of those that are qualified.

Mr. BRADEMAs. How many such States?

Mr. BELL. Could you respond to that, Ed? Do you know? We could provide that but the point that I would like to make—

Mr. BRADEMAs. You say 90 percent? This is your thesis you are asserting. You should be able to defend it.

Mr. BELL. I could not name the States at this point.

Mr. BRADEMAs. That troubles me. I would be very leary in all candor about sweeping assertions which you have no evidence to defend.

Mr. BELL. Well, the point I am trying to make, Mr. Brademas, is if Congress as a general policy would recognize the States in their State finance programs when writing legislation and give incentive and recognition to those that are doing a good job, we would get more of them doing that.

Mr. BRADEMAs. That is precisely the theory on which the bill now under consideration is based. Incentives are directly linked to the numbers of handicapped children being served in that State. That is the whole point of it, Mr. Commissioner.

Mr. BELL. You prohibit, Mr. Chairman, supplanting. You prohibit supplanting of State and local funds and that prohibition on supplanting by those States that are within a few percentage points of meeting the total needs is the thing that is going to put the good States in a bind, those States that are doing a good job. As we constantly talk about equality of opportunity in education, this is a great responsibility on the Federal level. We ignore these fundamental inequities on the State levels. I was just making the point that to some small extent I don't think it should be the whole bag of this bill, but I think there ought to be some recognition for that. I don't think we ought to put the total burden on that bill but some place somewhere in the Federal legislation we have to start to recognize that had we done it back in 1965—

Mr. BRADEMAs. Come in with your bill; we would be delighted to look at it. I for one would be delighted to look at it.

Mr. BELL. This is the first major bill since I have been the Commissioner that I have made this point. I want to make it because we failed to do so. It is not for me to argue for what I think is going to be

Mr. QUIE. Every formula we use would distribute money to the States. There is an effort to reward one against the other—I take it from one State to another State. Now, there may be some question on the formula of the number of children served, so we may be rewarding the States that do a good job rather than rewarding them for doing a poor job. In the Mathias amendment it was the school-age children. So we are doing that at least into the States.

Mr. BELL. But if you cannot supplant in those instances where a State has a good equalization program, that is by and large meeting the needs of their handicapped children—I want to be careful about not saying meeting 100 percent of the needs. If you prohibit supplanting and you appropriate the large amounts of funds that this bill is

calling for, if you begin to do that, what are those States going to spend the money on? You prohibit supplanting. It is the very problem we talked about, Mr. Quie. Here is a place—even if it were just a small gesture—that would give recognition and incentive. We would start to wake the State legislators up to their responsibilities. The reason we have this responsibility is the long-term, long-range neglect of the programs and good school finance formulas to meet the needs of the handicapped children. That is why we have the bill in the first place.

Mr. BRADEMAS. Mr. Hall.

Mr. HALL. I have found most of this very interesting.

On page 4, Commissioner Bell, the first full paragraph, second sentence, you say, "In their haste to increase by two or three times the number of handicapped children served it is very likely that education agencies will be encouraged to 'label' children with mild, easily remedied, handicapping conditions in increasing numbers."

I wonder if maybe we don't instead of encouraging maybe pressure or force them in this sometimes not only at the Federal level but at the State level.

Having had some experience with handicapped children before arriving on the Hill, I must say that I come from the State of Illinois, by the way, and I think they rank very high as far as educational programs are concerned, but that certainly does not mean that I believe they serve the handicapped children as they should.

In our State handicapped children were served under the Department of Health and the State education agency does not reach them. I happen to have worked in the State institution that was operated under the Department of Mental Health and I find that it was categorized as severely retarded children but I spent a great deal of my time tutoring children in basic arithmetic, language, spelling. You certainly can't tutor very handicapped children in most subjects if they are truly profoundly retarded.

So I am very concerned about this and I have to say that I have some experience and I am compelled to say that the State bureaucracies, like the Federal bureaucracies, are self-perpetuating and the children are lost in the shuffle.

I think I have to say when you mention State responsibility—and I agree with the basic responsibility—does belong to the State. I think if we let some States spend their entire tax revenue on education that they still would not be spending the money that other States do. I am concerned about that even if it is a low percent of children that we don't serve.

I understood in earlier testimony that you had some reservations about perhaps if we were headed into the field of educational psychology, and I am not sure that it would be a bad idea for the Federal Government to offer a little aid in the psychological end. I say that with the experience that I have. I have tried 2 months to get the State side in Illinois to do a psychological profile on two children and I can't get it done. It was not really their fault because they had assigned two psychologists to the county and I could just not get to them. So I am not really faulting the psychologists for that but I say that there is a need for psychological services when you get outside the educational agencies you don't have. Other than that I appreciate your testimony.

Mr. BRADEMAS. Mr. Commissioner, I have two questions that I would like to put to you that go back to the earlier colloquy of Mr. Quie in respect to the role of the States.

Dr. Martin, is the 5 percent that the bill provides for administrative expenses adequate to meet the responsibilities that are assigned to the States in this program?

Mr. BELL. Let me just comment and then ask Ed to respond. Most of these percentages don't provide a large enough basic amount for small States; and, generally, in bills of this type if we could estimate a basic amount that any State like the State of Nevada, for example, a small State, would need to handle the basic administration—if we could guarantee a basic amount and then go on the percentage, I think it would maybe meet it pretty well. I think in most States 5 percent would reach it.

Mr. BRADEMAS. In the present act, Education of Handicapped Children Act, the amount provided for administrative planning is not to exceed 5 percent of the State's allotment or \$400,000. The point of my question is does the language in the present law adequately provide for the planning responsibilities of the bill under consideration? Were it to become law, would it impose upon the State education agencies?

Mr. MARTIN. I would say that the major liability probably, or lack, would come in the area of monitoring. That is really, Mr. Brademas, where we have the question both at the State and Federal level. There really are enough people to get around and monitor the programs. Many of the States have used the money they now have and don't use the maximum, though, I think they should put into the field of local consultants and others. So I think that there is a large monitoring test.

Now, with the 5-percent figure you begin to take over at the magnitude of the bill, and we have not had this kind of test. I don't think you err on the side of allowing the States to do it, that is true. Especially small States don't speculate putting it in though there is a need for supervisors and a need for local supervisors.

On the converse side of the coin there are things which are administrative in the bill itself in the sense that the planning we were talking about before is administrative, and like certain other things. I think the line is not too clearly drawn so as to prohibit the States from expending a certain amount of money in that area. I don't know, for example, what the committee intended with regard to the advisory council and the development of the individual plans and some of the other things, how they saw those activities. Could they be paid for out of the programmatic funds, or would those kinds of things have to be limited to the \$200,000? That would be a problem.

Mr. BRADEMAS. Let me ask you another related question, Mr. Martin. Does the bill under consideration provide enough flexibility to the States in carrying out their responsibilities to possibly veto the planning proposed by local schools?

Mr. MARTIN. You know, when you used that word before I was thinking about it because it seemed to me the bill primarily seems to employ now a relatively automatic assurance. Here comes a local restriction and it says we are going to do these things that are laid out in the bill and I don't see the State as having in anyway turned that down. How would they? It would reside with the local school

superintendent. You say, I am going to do this in South Bend and I am in Indianapolis, I have to take your word for it. If you don't do it, we may get into a problem of cutting off funds. I don't see that there is any real decision to be made at the State level and it could be totally unsatisfactory. You say there is no way, this is a lot of baloney. But the States make us a good set of assurances and says this is what we are going to do. We have take their word for it.

Mr. BRADEMAs. I must say, Dr. Martin, that it certainly has not been any intention for this to be an automatic approval by the State. That is not the point. For example, a State education agency might well say to the local school district, "We don't think that your proposed plan covers enough children, that the scope of it is not broad enough, and therefore we think that you should do what the bill also makes possible and consolidate with other school districts in order to present a plan that affords genuine hope of doing a really important job."

Mr. BELL. I agree with that, Mr. Brademas, and I think our responsibility in the Office of Education will be to monitor the States and see that they really do this and I agree with you on the point.

Mr. BRADEMAs. I know in my conversations with at least one State school officer who might be able as any in the country, I have discussed this particular point, and because some apprehension was expressed by the school officer about the passthrough provision, I wish to point out that the State education agencies are given an opportunity to consider local plans, and if they feel that the plan is not adequate to reject it—and I did not regard that, Dr. Martin, as an automatic rule.

Mr. MARTIN. I would like to qualify what I said a little bit because, for example, you have on page 20 and some other places on page 19 pretty much called that, for on page 29 you are talking about the detailed timetable for accomplishing the goal. So those are the things that will be due to us on August 21, and they certainly give an administrative agency some room to make judgments about the adequacy of those provisions.

So I don't think what you have here is without teeth. At the front end it does not speak as much about the responsibility to assure that those plans are going to work, but we will certainly do that and have been doing it, that is, sending back State plans and saying we want general assurance that we want to see more careful planning. I don't see that you would be going in the wrong direction, Mr. Chairman.

Mr. BELL. One comment, Mr. Chairman. I am experiencing the timing problems of Public Law 93-380 which was signed in August and became effective in the fiscal year that we are now in. We have been hard pressed to get our regulations out and have them operative for funding in this particular fiscal year. I notice in here that you say the Office of Education has less than 120 days. I agree with that and wish that it were not necessary, but I know from past history that it has necessitated that and I think that has been the motivation that has been helpful in getting these regulations out. If the effective date of this bill could be such, because of the complexity of it, we could get our regulations in place. We will need staff to administer an act like this and the length of time that it takes to get civil service people on board. I would make a special appeal that we look at the effective date and see how we can get in position.

Mr. BRADEMAS. I appreciate that and I share your view. You will note that the new program contemplated in the bill becomes fully effective in fiscal 1978. In addition to the reasons you have just assigned for putting off the limitation until that date, there is another reason which goes to one of your criticisms of the bill which is that the bill is linked to the Federal funds in the bill—are linked to the numbers of children being served within any State, and that we put the implementation off until fiscal year 1978 to afford the States a clear and present opportunity to get busy so that they don't find themselves, in the familiar phrase, penalized.

In other words, all flags are flying and the opportunity is there for them to respond to what I thought you earlier were saying to incentives that would be provided by the Federal Government.

Thank you very much, Commissioner, and you, Dr. Martin and Mr. Hastings. We are very grateful to you for your time. We appreciate it and found it extremely helpful.

Mr. BELL. We appreciate the opportunity to give it.

Mr. BRADEMAS. The subcommittee will meet tomorrow at 9:30 to try to complete consideration of any other amendment to the bill.

[Whereupon at 11:30 a.m., the committee recessed, to reconvene at 9:30 a.m., Tuesday, June 10, 1975.]

APPENDIX

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF EDUCATION,
Washington, D.C., April 7, 1975.

Hon. JOHN BRADEMAs,
Chairman, Select Subcommittee on Education, Committee on Education and Labor,
House of Representatives, Washington, D.C.

DEAR MR. BRADEMAs: I am sorry that I will be unable to testify before the Select Subcommittee on Education on April 10 on the need for greater Federal financial assistance for the education of handicapped children. At that time I am already committed to appear before the subcommittee on Education of the Senate Labor and Public Welfare Committee. I understand that the staff of Mr. Stephen Kurzman (the Assistant Secretary for Legislation, DHEW) has already been in touch with your staff about this matter.

I am most interested in the work of your committee and thus I am disappointed that my schedule precludes participation on April 10. I will, however, be happy to cooperate with your subcommittee whenever possible for any future appearances.

Sincerely,

T. H. BELL,
U.S. Commissioner of Education.

(Frederick J. Weintraub and Alan Abeson)

NEW EDUCATION POLICIES FOR THE HANDICAPPED: THE QUIET REVOLUTION

The evolution to establish for the handicapped the same right to an education that already exists for the nonhandicapped is being fought in school board rooms, state legislatures, and—perhaps most important—in the courts.

A quiet revolution has been fought within American education during the past few years.¹ Its goal is the right to an education for *all* American children, and particularly those usually known as "the handicapped," those who, because of mental, physical, emotional, or learning problems, require special education services. Their number is estimated to be seven million, one million of whom receive no educational services at all.² Further, only 40% of these children, all of whom will be in need of special education services at some time during their education careers, are receiving the services they need.

This revolution to establish for the handicapped the same right to an education that already exists for the nonhandicapped has been occurring throughout the nation, in state and local school board rooms, state legislative chambers, and, perhaps most importantly, in the nation's courts. While the most significant measure of the impact of this movement is the number of children who will no longer be denied an education, it is clear that other basic public policy matters will be reshaped.

Public policy determines the degree to which minorities, in this case the handicapped, will be treated inequitably by the controlling majority. It is almost axiomatic that those with power to distribute resources and benefits will not allocate those resources and benefits equitably to all who may have interest. Thus minorities and civil rights proponents seek from the controlling majority equal treatment for the minority.

There is no doubt that the handicapped have been and continue to be treated as a powerless minority. "With minor exceptions, mankind's attitudes towards its

¹ The phrase, "quiet revolution," comes from Paul R. Dimond, "The Constitutional Right to Education: The Quiet Revolution," *The Hastings Law Journal*, vol. 24, 1973, pp. 1087-127.

² Frederick Weintraub et al., *State Law and the Education of the Handicapped: Issues and Recommendations* (Arlington, Va.: The Council for Exceptional Children, 1971), p. 7.

handicapped population can be characterized by overwhelming prejudice. [The handicapped are systematically isolated from] the mainstream of society. From ancient to modern times, the physically, mentally, or emotionally disabled have been alternatively viewed by the majority as dangers to be destroyed, as nuisances to be driven out, or as burdens to be confined. . . . [T]reatment resulting from a tradition of isolation has been invariably unequal and has operated to prejudice the interests of the handicapped as a minority group."¹

Although many people still believe that America's public schools are the great equaliser for America's diversity, this has not been true for handicapped children; for the most part they have been blocked from entering the schoolhouse door. The strategies used by school officials have included postponement, exclusion, suspension, and outright denial. Such incidents continue to occur, although most state constitutions require the state to provide all children with an education.

The legal basis for these practices is frequently the state compulsory attendance laws, which for some handicapped children become compulsory nonattendance laws. Typically, they provide for the exclusion of "children with bodily or mental conditions rendering attendance inadvisable," as in Alaska.⁴ In Nevada exclusion may occur when "the child's physical or mental condition or attitude is such as to prevent or render inadvisable his attendance at school or his application to study."⁵

The legality of denying a public education to handicapped children by exclusion, postponement, or any other means is increasingly being challenged. The basis for this challenge comes from the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, which guarantees to all the people equal protection of the laws. Basically, this means that what is done to some people must be done to all persons on equal terms. Thus a state may not set up separate systems and procedures for dealing with different groups of people unless a compelling cause for such differential treatment can be demonstrated. During the 1950s and the early 1960s, the use of the equal protection concept by the Warren Court as a rationale for achieving social justice resulted in the Fourteenth Amendment being ingrained into the basic fabric of American justice.

The application of the equal protection concept to the education of handicapped children will force public education to reexamine the term "equal educational opportunity." Initially, equal educational opportunity was a populist concept. Tom Watson translated it thus: "Close no entrance to the poorest, the weakest, the humblest. Say to ambition everywhere, the field is clear, the contest fair; come, and win your share if you can."⁶ Education became a race or a free-for-all where everyone had equal access to its resources and equal opportunity to meet or fail its objectives.

In the 1960s American education moved into the compensatory period. To paraphrase James Coleman, we said to those in the race who could not run, "We'll give you crutches, we'll give you remedial reading, we'll help you run the race."⁷ Thus the concept was changed to require equal access to differing resources for equal objectives, with everybody still coming out the same in the end.

Today the meaning of equal educational opportunity has changed once again. Now, principally because of federal court activities already concluded in Pennsylvania, the District of Columbia, and Louisiana, and pending in over 35 suits throughout the country, the new meaning is "equal access to differing resources for differing objectives."⁸

The right-to-education movement, as this revolution to redefine equal educational opportunity is called, is less than three years of age. A beachhead was achieved in the summer and fall of 1971 when the state of Pennsylvania entered into a court-approved consent agreement with the plaintiff, the Pennsylvania Association for Retarded Children (PARC) and 13 mentally retarded children of school age who were representing themselves and the class of all other retarded children of school age in the state.⁹ The suit had been brought in January, 1971,

¹ Brief of amicus curiae, *Lori Case v. State of California*, Civil No. 13127, Court of Appeals, Fourth Dist. Calif., filed Dec. 14, 1972, p. 1a.

² Alaska Statutes, Title 14, Ch. 30 (1971).

³ Nevada Revised Statutes, Section 392.060 (1968).

⁴ C. Vann Woodward and Tom Watson, *Agrarian Rebel* (New York: Oxford University Press, 1963).

⁵ James Coleman, "The Concept of Equality of Educational Opportunity," *Harvard Educational Review*, vol. 33, 1963, p. 17.

⁶ Frederick Weintraub and Alan Adelson, "Appropriate Education for All Handicapped Children: A Growing Issue," *Syracuse Law Review*, vol. 23, 1972, p. 1056.

⁷ *Pennsylvania Association for Retarded Children v. Pennsylvania*, 324 F. Supp. 1257 (E.D. Pa. 1971).

against the Commonwealth of Pennsylvania for the state's failure to provide access to a free public education for all retarded children. The defendants included the state secretaries of education and public welfare, the State Board of Education, and 13 named school districts, representing the class of all of Pennsylvania's school districts.

The suit, heard by a three-judge panel in the Eastern Pennsylvania U.S. District Court, specifically questioned public policy as expressed in law, and policies and practices which excluded, postponed, or denied free access to public education opportunities to school-age mentally retarded children who could benefit from such education.

Expert witnesses testified, focusing on the following major points:

1. The provision of systematic education programs to mentally retarded children will produce learning.

2. Education cannot be defined solely as the provision of academic experiences to children. Rather, education must be seen as a continuous process by which individuals learn to cope and function within their environment. Thus, for children to learn to clothe and feed themselves is a legitimate outcome achievable through an educational program.

3. The earlier these children are provided with educational experiences, the greater the amount of learning that can be predicted.

The order provided that the state could not apply any law which would postpone, terminate, or deny mentally retarded children access to a publicly supported education, including a public school program, tuition or tuition maintenance, and homebound instruction. By October 1971, the plaintiff children were to have been reevaluated and placed in programs, and by September 1972, all retarded children between the ages of 6 and 21 were to be provided a publicly supported education.

Local districts providing preschool education to any children were required to provide the same for mentally retarded children. The decree also stated that it was highly desirable to educate these children in a program most like that provided to nonhandicapped children. Further requirements included the assignment of supervision of educational programs in state schools and institutions to the State Department of Education, the automatic reevaluation of all children placed on homebound instruction every three months, and a schedule that would lead to the placement of all retarded children in programs by September 1, 1972. Finally, two masters were appointed by the court to oversee the plans to meet the requirements of the order and agreement.

Those who described the outcome of the *Pennsylvania Association for Retarded Children* case as being "one of those things" or said "let's wait and see what happens" were later that year provided with a more impressive federal ruling. In *Mills v. Board of Education*,¹⁰ the parents and guardians of seven District of Columbia children brought a class action suit against the D.C. Board of Education, the Department of Human Resources, and the mayor for failure to provide all children with a publicly supported education.

The plaintiff children ranged in age from 7 to 16 and were alleged by the public schools to present the following types of problems leading to the denial of their opportunity for an education: slight brain damage, hyperactive behavior, epilepsy and mental retardation, and mental retardation with an orthopedic handicap. Three children resided in public residential institutions with no education program. The others lived with their families, and when denied entrance to programs were placed on a waiting list for tuition grants to obtain a private education program. However, in none of these cases were tuition grants provided.

The history of events involving the city and the attorneys for the plaintiffs immediately prior to the filing of the suit demonstrated the Board of Education's legal and moral responsibility to educate all excluded children; although provided with numerous opportunities to provide services to plaintiff children, the board failed to do so.

On December 20, 1971, the court issued a stipulated agreement and order that provided for the following:

1. The named plaintiffs must be provided with a publicly supported education by January 3, 1972.

2. By the same date, the defendants had to provide a list showing every child of school age not receiving a publicly supported education.

3. Also by January 3, the defendants were to initiate efforts to identify all other members of the class not previously known.

¹⁰ *Mills v. Board of Education of D.C.*, 348 F. Supp. 846 (D.D.C. 1972).

4. The plaintiffs and defendants were to consider the selection of a master to deal with special questions arising out of this order.

The defendants failed to comply with the order, resulting in plaintiffs filing, on January 21, 1972, a motion for summary judgment and a proposed order and decree for implementation of the proposed judgment.

On August 1, 1972, U.S. District Judge Joseph Waddy issued such an order and decree providing:

1. A declaration of the constitutional right of all children, regardless of any exceptional condition or handicap, to a publicly supported education.

2. A declaration that the defendant's rules, policies, and practices which excluded children without a provision for adequate and immediate alternative educational services and the absence of prior hearing and review of placement procedures denied the plaintiffs and the class rights of due process and equal protection of the law.

The defendants claimed in response that it would be impossible for them to afford the relief sought unless the Congress appropriated more funds or funds were diverted from other educational services for which they had been appropriated. The court responded:

The District of Columbia's interest in educating the excluded children clearly must outweigh its interest in preserving its financial resources. If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia public school system, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child.

The decisions in *PARC* and *Mills*, although of landmark importance, represent only the tip of the iceberg in the effort to assure through public policy the equal treatment of handicapped children by the majority interests of education. In addition to the equal protection efforts of the courts, attorneys general in New Mexico, Arkansas and elsewhere; legislatures in Tennessee,¹¹ Massachusetts,¹⁴ Wisconsin,¹⁵ and elsewhere; and at least one commissioner of education, Ewald B. Nyquist of New York,¹⁶ have ordered public policy alteration regarding the public education of handicapped children.

A second important aspect of public policy is that it determines the degree to which those who are served will be vulnerable to abuse from those who provide the services. Whenever an individual—any individual, handicapped or not—is dependent for his basic rights; for his very existence, upon those who serve him, then he is no longer free, because his whole future is dependent upon maintaining the good graces of those who serve him. As Burton Blatt has said, "How can people be free when others have control over the destiny of their lives? . . . One of the objectives of this revolution must be to reach the day when handicapped individuals are free and have the ability to determine their own destinies."¹⁷

Recent litigative activities again have served to reshape this aspect of public policy. Following the filing of the *PARC* suit, one of the initial questions asked of local school administrators by the court concerned the manner in which they made decisions to exclude the plaintiff children from an education. The response was that such decisions were often made on the basis of hearsay information compiled casually, often without school officials ever seeing the child. The court responded incredulously and quickly established the right of all children to the protection of procedural due process (in accordance with the Fifth and Fourteenth Amendments) whenever changes in their educational status were proposed.

In the *PARC* consent order, the definition of "change in educational status" is "assignment or reassignment, based on the fact that the child is mentally retarded or thought to be mentally retarded, to one of the following educational assignments: regular education, special education, or to no assignment, or from one type of special education to another." The order further lists 23 specific steps required to meet the due process requirements.

¹¹ New Mexico Attorney General's Opinion, NMAG 71-125 (1971).

¹² Arkansas Attorney General's Opinion, 73-187 (Sept. 7, 1973).

¹³ Tennessee Acts, Ch. 289 (1972).

¹⁴ Massachusetts Statutes Ch. 766 (1972).

¹⁵ Wisconsin Statutes, Ch. 89 (1973).

¹⁶ *Reid v. Board of Education of the City of New York*, Administrative Procedure No. 8742 before the State Commissioner of New York, decision rendered Nov. 16, 1973.

¹⁷ Burton Blatt, oral presentation at Third Annual Leadership Conference in Special Education, Minneapolis, Nov. 19, 1973.

Some of those requirements include:

1. Providing written notice to parents or guardians of the proposed action.
2. Provision in that notice of the specific reasons for the proposed action and the legal authority upon which such actions can occur.
3. Provision of information about alternative education opportunities.
4. Provision of information about the parent's or guardian's right to contest the proposed action at a full hearing before the state secretary of education or his designate.
5. Provision of information about the purpose and procedures of the hearing, including parent's or guardian's right to counsel, cross examination, presentation of independent evidence, and a written transcript of the hearing.
6. Provision for the scheduling of the hearing.
7. Indication that the burden of proof regarding the placement recommendation lies with the school district.
8. Right to obtain an independent evaluation of the child, at public expense if necessary.

These procedures, or ones like them, are frequently associated with the right-to-education revolution. For example, they have been spelled out by the courts in *Mills* and in *Lebanks v. Spears*¹⁸ in Louisiana; by the legislature in Massachusetts and Tennessee; and by the State Department of Education in Colorado.¹⁹ In addition, a bill pending in the U.S. Congress contains similar provisions.²⁰

Some public educators have responded to these clear mandates as a violation of their professional prerogative. Clearly, however, the new public policy recognizes the inappropriate manner in which educators have often made relevant decisions. The new policy reflects the belief that the type of education to be provided to a child is just as significant a decision as whether a person is innocent or guilty of a crime, because both decisions will influence the individual's entire future. The decision to place or not to place a child in a program for the mentally retarded is not only a decision about what happens to him today, but his whole future; and thus the child and his family must have recourse to challenge the appropriateness of the school's recommendations.

In all instances the courts have not only ruled that handicapped children are entitled to a free public education, but are also entitled to an education appropriate to their needs. It is possible to see educational placement of children as a continuum. At one end are those placements that are totally normal—e.g., a regular classroom. At the other end are those that are highly abnormal—e.g., an institution. The courts are requiring schools to follow policies of least restrictive placements. This requires that the settings in which educational programs are provided to handicapped children be as close to normal as possible. The order in *Lebanks v. Spears* specified that "all evaluations and educational plans, hearings, and determinations of appropriate programs of education and training . . . shall be made in the context of a presumption that among alternative programs and plans, placement in a regular public school class with the appropriate support services is preferable to placement in special public school classes" and so on. Always, the concern is to maintain the child in that setting which is most normal and in which he can learn most effectively.

Much has been written about the "labeling" dilemma in American education. Labels are often used to justify isolation and discrimination against children. Appropriateness and its due process procedures will not eliminate labels, but they do require that when applied, labels must be accurate. Due process will contribute substantially to prevention of incorrect labeling, which is often followed by inappropriate educational placement.

Labeling has also been the subject of litigation. In January, 1970, a suit was filed in the District Court of Northern California on behalf of nine Mexican-American students, ages 8 to 13.²¹ The children came from homes in which Spanish was the major language spoken. All were in classes for the mentally retarded in Monterrey County, California. Their IQs ranged from 30 to 72, with a mean score of 63.5. When they were retested in Spanish, seven of the nine scored higher than the IQ cutoff for mental retardation, and the lowest score was three points below the cutoff line. The average gain was 15 points.

¹⁸ *Lebanks v. Spears*, Civil No. 71-2897 (E.D. La. April 24, 1973).

¹⁹ *Rules for the Administration of the Handicapped Children's Act*, Department of Education, Denver, Colo., 1973.

²⁰ S. 6 Education for All Handicapped Act. U.S. Senate, introduced Jan. 4, 1973, by Williams et al.

²¹ *Diana v. State Board of Education*, Civil No. C-70, 37 37 RFP (N.D. Cal. Jan. 7, 1970 and June 18, 1973).

The plaintiffs charged that the testing procedures utilized for placement were prejudicial, because the tests placed heavy emphasis on verbal skills requiring facility with the English language, the questions were culturally biased, and the tests were standardized on white, native-born Americans. The plaintiffs further pointed out that in "Monterrey County, Spanish surnamed students constitute about 18.5% of the student population, but nearly one-third of the children in educable mentally retarded classes."

Studies by the California State Department of Education corroborated the inequity. In 1966-67, of 85,000 children in classes for the educable mentally retarded in California, children with Spanish surnames comprised 26% while they accounted for only 13% of the total school population.

The plaintiffs sought a class action on behalf of all bilingual Mexican-American children then in classes for the educable mentally retarded and all such children in danger of inappropriate placement in such classes. On February 5, 1970, a stipulated agreement order was signed by both parties. The order required that:

1. Children are to be tested in their primary language. Interpreters may be used when a bilingual examiner is not available.
2. Mexican-American and Chinese children in classes for the educable mentally retarded are to be retested and evaluated.
3. Special efforts are to be extended to aid misplaced children readjust to regular classrooms.

4. The state will undertake immediate efforts to develop and standardize an appropriate IQ test.

Another important case in this area was *Larry P. v. Riles*,² filed as a class action in late 1971 on behalf of six black, elementary-school-aged children attending class in the San Francisco Unified School District. It was alleged that they had been inappropriately classified as educable mentally retarded and placed and retained in classes for such children. The complaint argued that the children were not mentally retarded, but rather the victims of a testing procedure which failed to recognize their unfamiliarity with white middle-class culture. The tests ignored the learning experiences the children may have had in their homes, the complaint said. The defendants included state and local school officials and board members.

It was alleged that misplacement in classes for the mentally retarded carried a stigma and "a life sentence of illiteracy." Statistical information indicated that in the San Francisco Unified School District, as well as the state, a disproportionate number of black children were enrolled in programs for the retarded. It was further pointed out that even though code and regulatory procedures regarding identification, classification, and placement of the mentally retarded were changed to be more effective, inadequacies in the processes still existed.

On June 20, 1972, the court enjoined the San Francisco Unified School District from placing black students in classes for the educable mentally retarded on the basis of IQ tests as currently administered, if the consequence of using such tests is racial imbalance in the composition of EMR classes.

The public policy shift represented by judicial decrees and new legislation calling for the provision of appropriate education in the least restrictive alternative educational placement as determined through due process has set the stage for another aspect of the "quiet revolution." That aspect is: Appropriate education requires individual program planning for each child.

The individual plan would be one jointly determined and agreed to (in writing) by the child, his parents, and the public schools. The agreement would cite the objectives to be achieved with the child, the resources (dollars, personnel, materials, space, time) to be allocated, a schedule for attainment of the objectives, and a plan for evaluation attainment. The agreement might also specify parental and child obligations. Additionally, the agreement might bind third parties who contribute to the child's learning; for example, a local agency that provides physical therapy. If the objectives are met, then a new plan is created; if not, then the plan is renegotiated to employ new strategies. This should keep children from remaining in inappropriate programs.

Public policy largely determines how society will perceive a class or group of individuals. Thus the nation's policies regarding handicapped children by and large have cumulatively produced the negative image of these children. Society's negative view of the handicapped is developed when such children are excluded from the schools of all other children, confined to distant out-of-sight human warehouses, and refused access to airplanes, driver's licenses, and employment,

² *Larry P. v. Riles*, Civil No. C-71-2270, 343 F. Supp. 1206 (N.D. Cal., 1972).

strictly on the basis of their handicap. U.S. Senator Harrison A. Williams of New Jersey recently discussed his own feeling of discomfort when associating with handicapped people. When conducting hearings on the education of the handicapped, he realized that during his education he did not attend school with handicapped children.² Senator Williams wondered how, then, as adults we can behave positively toward the handicapped. How can persons be asked to employ the handicapped and live with the handicapped when they grow up in an education system where they have no contact with handicapped people, where they are told the handicapped are different and that they should be segregated? If we truly wish to be a society that respects differences, then the place to start is in our schools. It is senseless to teach respect for individual differences in an educational environment laced with policies to the contrary.

Finally, public policy influences how a class or group of individuals will feel about themselves. Imagine the self-perception of a child who is repeatedly told he is different, unusual, and doesn't belong, hence is prevented from living like his peers by formidable public policies and procedures. While the psychologists in California who tested English-speaking children in Spanish probably did not perceive themselves as part of a conspiracy against Mexican-American children, their actions could have conveyed that image to the children, their families, and their communities. The child who is suspended from school for what may be a good reason, but without being provided due process, may learn that this is a society not of law but one of arbitrary and capricious tyrants. The child in a wheelchair who must attend a special school for no other reason than the fact that a flight of stairs bars entry to the neighborhood school is learning that this is, in fact, a very hostile society.

Yes, a quiet revolution is occurring. At the minimum, it will make educational opportunity a reality for all handicapped children. At the maximum, it will make our schools healthier learning environments for all our children. Thus far the revolutionaries have been the courts, the legislators, the school boards. Now it is time for us educators to make it our revolution.

PREPARED STATEMENT OF THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION

The American Occupational Therapy Association appreciates this opportunity to acknowledge the significant contributions by the Select Subcommittee on Education and its Chairman, the Honorable John Brademas, in extending educational services to all handicapped children. We should like to submit for the record the following official statement by our organization on our special concerns in the field of education for the handicapped:

The American Occupational Therapy Association represents a health profession dedicated to the concept that every individual is entitled to maximum opportunities to develop and utilize his/her abilities and that every effort should be made to minimize the disabling effects that illness, injury, mistakes of nature or environment have on the individual's ability to achieve a productive and satisfying life.

The AOTA strongly supports the philosophy of providing and ensuring non-discriminatory educational opportunities for all children and handicaps and/or handicapping conditions. Provision of such educational opportunities require a change from the traditional definition of education as it relates to academic achievement to a broader concept concerned with total human functioning.

Cognitive development does not proceed from a vacuum; it is based on early sensory-motor learning. The occupational therapist is concerned less with specific education of the child than with preparing the child for learning and sustaining that learning readiness in the educational setting. The occupational therapist guides the child in postural reactions and the mastery of physical control essential for writing and other skills. Concern is for gaps or lags in the total development of the child and the focus is primarily on the child's approximation of normal development in all spheres. The purpose is not to teach the basic cognitive skills but to provide sensory-motor experiences that the disabled child is not likely to achieve spontaneously. Through the study of physiological sciences and abnormal

² Hearings before the Subcommittee on Handicapped of the Committee on Labor and Public Welfare, United States Senate on S. 896, S. 6, S. 84, S. 808, Washington, D.C., March 20, 21, 22, 1973, and Newark, N.J., April 9, 1973.

conditions in all systems of the body, the occupational therapist is able to distinguish neuro-physiological limitations from those which might be environmentally imposed. Evaluations of the child's strengths and limitations provide information for the special educator and others involved with helping the child maximise his/her potential. The role of the occupational therapist is to prepare the child to function independently in those areas in which mastery is possible and to provide adaptations for independent functioning as they are demonstrated to be essential.

As a health profession organization whose practitioners provide prevention and health maintenance services, as well as remediation and rehabilitation, the AOTA is especially concerned with:

(1) The need for early screening and evaluation of pre-school children to identify developmental lags, deficits and/or behaviors which may interfere with the child's ability to learn and function in the school experience. If children with "special needs", as well as those with the more obvious physical and mental handicaps, can be identified and intervention begun before school age, much can be done to facilitate preparation and readiness for school and reduce the "labelling" process which can produce such destructive results for the "labelled" child.

(2) The inadequate provision for qualified non-teaching professionals to provide the necessary evaluation and remedial programming resources. While classroom teachers may be familiar with the concepts and principles of education for the handicapped, they cannot be expected to work unassisted toward identification and remediation of specific deficits, nor can they effectively use classroom time to do this. It is not realistic to expect the teacher to be knowledgeable and expert in recognizing, diagnosing, and remediating all problems which may exert tremendous influence on the child's ability to utilize or capitalize on educational opportunities and experiences. Such expectations are unfair to the teacher, especially when such problems have as their source a primary neurological, sensory, motor or developmental base.

(3) Recognition of the difficulties inherent in integrating children with special needs into an already established culture and system, and the need to appreciate that peer- and self-acceptance evolves from an understanding and respect for differences.

(4) The limited understanding and support from some school administrators which deprives teachers of the consultation and resources which would enable them to better deal with the special child in the regular classroom. This situation is frequently compounded by school boards' and parent groups' lack of recognition that they should provide consulting and direct care resources to teachers and children, particularly when those resources are not seen as directly affecting teaching/learning activities. Too frequently, such resources are viewed as extraneous and are the first services to be eliminated when budgets are cut.

(5) Architectural barriers in school buildings which preclude adequate and non-discriminatory integration of the child with a handicap or handicapping condition into regular classrooms.

(6) The need for a sensitive balance of shared and separate learning experiences determined on the basis of the varied and changing needs, abilities and limitations of the child.

In view of these concerns, the AOTA strongly encourages those agencies and organizations concerned with education for the handicapped to consider the following actions as crucial in realizing the goal of a viable, integrated education for all children:

(1) Continue to promote the concept of integrated educational experiences for all children but with realistic expectations of classroom teachers and their responsibilities to all children;

(2) Assist administrators, school boards, and parent groups to understand the necessity of providing resources to teachers so that children with special needs can profit from an integrated educational experience;

(3) Recognize and support of the use of resources (consultants, non-teaching professionals, such as occupational therapists);

(4) Provide special adaptation of the physical environment and develop and provide assistive devices for the child to maximise functioning in the classroom and in the school setting;

(5) Promote and support model programs, which can be replicated, to help teachers and non-teaching health care professions work effectively together;

(6) Develop educational materials and programs for children, parents, teachers and administrators to help them stress the similarities and understand the differences among all children in order to reduce potential discrimination;

(7) Challenge the prevailing concept that consultants and/or non-teaching health professionals must be teacher-certified to work within the public school system, particularly in that their responsibilities are to help special children acquire and retain readiness for learning; and

(8) Publicize programs now in existence which are providing assistance to public school teachers.

In conclusion we should like to recognize the substantial progress made by the 93rd Congress in the adoption of P.L. 93-380. We fully support your continuing effort to extend and improve educational services for the handicapped.

STATUS OF STATE EDUCATION PROGRAMS FOR HANDICAPPED CHILDREN

(Compiled by the Council for Exceptional Children)

ALABAMA

At present, there are in Alabama, a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Alabama State Department of Education indicates that out of a total of 111,149 handicapped children, only 22,334, about a fifth, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 6,000 handicapped would be served there would still be over 80,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Alabama mandating that all eligible handicapped children be provided with an appropriate education by 1977.

ALASKA

At present, there are in Alaska a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Alaska Department of Education indicates that out of a total of 5,950 handicapped children, only 1,875, less than 40 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 125 handicapped children would be served there would still be over 1,700 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Alaska mandating that all eligible handicapped children be provided with an appropriate education.

ARIZONA

At present, there are in Arizona a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Arizona Department of Education indicated that 27,381 handicapped children, out of a total of 40,059, close to 70 percent were not receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 4,000 handicapped would be served there would still be over 23,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Arizona mandating that all eligible handicapped children be provided with an appropriate education by 1976. Despite the large number of children still needing service, state appropriations for the education of the handicapped increased only \$2.5 million from 1971-72 to \$5.6 million for the 1973-74 school year.

ARKANSAS

At present, there are in Arkansas a great many handicapped children who are not receiving an appropriate education. Data collected from the Arkansas State Department of Education indicates that, as of the past school year, only 22.8 percent of the handicapped school age population were being served. 53,118 additional handicapped children need the opportunity to receive a meaningful public education. As indicated in its annual report to the Governor, the State Department of Education estimates that 3,700 additional teaching units costing approximately \$10,000 per unit are required to meet this need. Although it is anticipated that some additional funds may be forthcoming from the state, it will represent a relatively small contribution to the overall necessity for 37 million

additional dollars. In considering this situation, it must be emphasized that law is presently in force in Arkansas mandating that all eligible handicapped children be provided with an appropriate education by the 1979-80 school year.

CALIFORNIA

At present there are in California a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the California Department of Education indicates that out of a total of 1,141,080 handicapped children, only 321,760 children, significantly less than half, were receiving an education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number of handicapped children to be served would be little different from the 1971-72 level of service. In considering this situation, it must be emphasized that law is presently in force in California mandating that all eligible handicapped children be provided with an appropriate education. The educational dilemma facing California's handicapped children and their families had been considered sufficiently serious to lead to the filing of at least four right to education lawsuits.

COLORADO

At present, there are in Colorado a great many handicapped children who are not receiving an appropriate public education. Statistics gathered by the Colorado Department of Education for the school year 1972-73 showed that of the 91,060 handicapped children in the state only 34,388, or slightly more than one-third, were receiving needed special educational services. In considering this situation, it must be emphasized that with the passage of H.R. 1164 by the legislature, Colorado has mandated that appropriate public education services must be provided to all eligible handicapped children by September, 1976. The educational dilemma facing Colorado's handicapped children and their families has been considered sufficiently serious to lead to the filing of a pending class action right to education lawsuit in the Federal District Court in Denver. *Colorado Association for Retarded Children v. Colorado* (Civil No. C-4620 D. Colo., Filed Dec. 22, 1972).

CONNECTICUT

At present, there are in Connecticut a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Connecticut State Department of Education indicates that out of a total of 89,866 handicapped children, only 35,544, less than 40 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 4,000 handicapped would be served, there would still be over 50,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Connecticut mandating that all eligible handicapped children be provided with an appropriate education.

DELAWARE

At present, there are in Delaware a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Delaware Department of Public Instruction indicates that out of a total of 15,722 handicapped children, only 8,351, slightly over half, were receiving a public education designed to meet their needs. While projections done by the Department for the 1972-73 school year predicted an additional 2,000 children would be served, there would still be over 6,000 handicapped children waiting for their opportunity to receive a meaningful public education. The educational dilemma facing these children has been so severe that in 1971, Catholic Social Services, Inc. of Delaware filed an administrative action against the State Board of Education to obtain an education for three handicapped children excluded from school (filed August 24, 1971). Since that time discussion has been occurring throughout the state about the possibility of filing a class action right to education lawsuit against the state.

FLORIDA

At present, there are in Florida, a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Florida State Department of Education indicates that over

34,000 out of a total of 139,903 handicapped children were not receiving an education designed to meet their needs. Projections done by the State Department of Education for the 1972-73 school year indicated little change from the 1971-72 school year. In considering this situation, it must be emphasized that law is presently in force mandating that all handicapped children be provided with a public education. Of importance also is that in the just concluded session of the legislature, this mandate was extended to include profoundly retarded children.

GEORGIA

At present, there are in Georgia a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Georgia Department of Education indicates that out of a total 127,864 handicapped children, only 65,061, about half, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 11,000 handicapped would be served there would still be over 50,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Georgia mandating that all eligible handicapped children be provided with an education.

HAWAII

At present, there are in Hawaii a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Hawaii Department of Education indicates that only 9,106 handicapped children, out of a total of 19,590 children, less than half, were receiving an education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number of handicapped children to be served would be little different from the 1971-72 level of service. In considering this situation, it must be emphasized that law is presently in force in Hawaii mandating that all eligible handicapped children be provided with an appropriate education. The educational dilemma facing Hawaii's handicapped children has been considered sufficiently serious to lead to the filing of a class action right to education lawsuit in Hawaii (*Kekahana v. Burns*, Civil No. 72-3799, D. Hawaii).

IDAHO

At present, there are in Idaho a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Idaho State Department of Education indicates that out of a total of 36,561 handicapped children, only 8,395, about a fifth, were receiving a public education designed to meet their needs. While projections done by the Department for the 1972-73 school year predicted that an additional 1700 children would be served, there still would be over 25,000 handicapped children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Idaho mandating that all handicapped children be provided with a public education.

ILLINOIS

At present, there are in Illinois a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Office of the Superintendent of Public Instruction indicates that 74,504 handicapped children, out of a total of 183,381 children, about 40 percent were not receiving a public education designed to meet their needs. In considering this situation, it must be emphasized that law is presently in force in Illinois mandating that all eligible handicapped children be provided with an appropriate education. Despite the large number of children still needing service, state appropriations for the education of the handicapped increased only \$16.4 million from 1971-72 to \$73.3 million for the 1973-74 school year.

INDIANA

At present, there are in Indiana a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Department of Public Instruction indicates that 58,492 handicapped children, out of a total of 145,091 children, were not receiving needed

special education services. Projections done by the Department for the 1972-73 school year predicted that the total number of children to be served would be little different from the 1971-72 school year. In considering this situation, it must be emphasized that state law presently in force in Indiana mandates that an appropriate public education must be provided to all eligible handicapped children.

IOWA

At present, there are in Iowa a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Iowa Department of Public Instruction indicates that out of a total of 94,731 handicapped children, only 36,521, less than 40 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 7,000 handicapped would be served, there would still be over 50,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Iowa mandating that all eligible handicapped children be provided with an appropriate education. Despite the large number of children still needing service, state appropriations for the education of the handicapped increased only \$3.7 million from 1971-72 to \$7.2 million for the 1973-74 school year.

KANSAS

At present, there are in Kansas a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Kansas State Department of Education indicates that 26,853 handicapped children, out of a total of 54,566 children, about half were not receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 2,000 handicapped would be served, there would still be close to 25,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Kansas mandating that all eligible handicapped children be provided with an appropriate education by 1979. Despite the large number of children still needing service, state appropriations for the education of the handicapped increased only \$2.4 million from 1971-72 to \$6.1 million for the 1973-74 school year.

KENTUCKY

At present, there are in Kentucky a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the State Department of Education indicates that only 24,336 children out of a total of 78,386 handicapped children, less than a third, were receiving an education to meet their needs. Projections done by the Department for the 1972-73 school year suggest that close to 40,000 handicapped children, about half, would receive specially designed services. In considering this situation, it must be emphasized that law is presently in force in Kentucky which requires that all handicapped children be educated by September, 1974. The educational dilemma facing Kentucky's handicapped children and their families has been considered sufficiently serious to lead to the filing of a pending class action right to education lawsuit in the federal district court in Frankfort, *Kentucky Association for Retarded Children, et al. v. Kentucky State Board of Education* (Civil Action No. 435, E. D. Ky., filed Sept. 6, 1973).

LOUISIANA

At present, there are in Louisiana a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Louisiana State Department of Education indicates that out of a total of 122,344 handicapped children, only 45,056, less than 40 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 5,500 handicapped would be served, there would still be over 70,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Louisiana mandating that all eligible handicapped children be provided with an

appropriate education. You will be interested to know that the educational dilemma facing Orleans Parish mentally retarded children and their families was considered sufficiently serious to lead to the filing of a successful class action right to education lawsuit, *Lebanks v. Spears*, (60 F.R.D. 155, E.D. La. 1973) on behalf of all the Parish's mentally retarded children. Despite the large number of children still needing service, state appropriations for the education of handicapped increased only \$8 million from 1971-72 to \$20 million for the 1973-74 school year.

MAINE

At present, there are in Maine a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Maine Department of Education and Cultural Services indicates that only 6,758 handicapped children, out of a total of 30,743 children, less than a fourth, were receiving an education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the 1971-72 level of service would be extended to only an additional 3,000 children still leaving about 20,000 handicapped children waiting for their opportunity to obtain a public school education. In considering this situation, it must be emphasized that law is presently in force in Maine mandating that appropriate educational services be provided to every eligible handicapped child. You should also know that the amount of state appropriations available for the education of the handicapped for the 1973-74 school year was \$1.5 million, an increase of only \$200,000 since the 1971-72 school year.

MARYLAND

At present, there are in Maryland a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Maryland Department of Education indicates that 57,880 handicapped children, out of a total of 123,639 children, close to half, were not receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number to be served would be little different than the 1971-72 school year level of service. In considering this situation, it must be emphasized that Maryland presently has law in force mandating that all eligible handicapped children must be provided with an appropriate public education by 1979. That date, however, has been set aside as a result of a decision in a class action right to education lawsuit, *Maryland Association for Retarded Children v. State of Maryland* (Equity No. 100/182/77676, Circuit Ct. Baltimore City, Maryland, May 3, 1974), in which the court proclaimed that all children have the right to an education which must be provided by September, 1975.

MASSACHUSETTS

At present, there are in Massachusetts, a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Department of Education indicates that 45,152 children out of a total of 108,613 handicapped, less than half, were receiving an education to meet their needs. Projections done by the Department for the 1972-73 school year suggested little change from the 1971-72 school year. In considering this situation, it must be emphasized that with the passage of Chapter 766, partially motivated by a class action right to education lawsuit, the Massachusetts legislature mandated that all handicapped children be educated by September, 1974. While state appropriations to implement the act have been increased to approximately \$60 million, it has been estimated that an additional \$40 to \$50 million is still needed to achieve full compliance.

MICHIGAN

At present, there are in Michigan a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Michigan Department of Education indicates that 123,279 handicapped children, out of a total of 288,297 children, did not receive a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number of handicapped children that would receive services would be little different from the 1971-72 level of service. In considering this situation it must be emphasized that with the passage by the Michigan legislature of Public Act 198 in 1971, the state mandated that appropriate public education services must be provided to all handicapped

children by September, 1973. The importance of this Act was emphasized by Judge Charles Joiner of the Eastern District of Michigan Federal District Court when he ruled in *Harrison v. State of Michigan* (350 F. Supp. 846, E.D. Mich. 1972) that "this law is a whole new attack on the problem of special education. For the first time, the legislature has directed in unequivocal terms the state and other educational districts to face up to the problem of providing educational programs and services designed to develop the maximum potential of every handicapped person."

MINNESOTA

At present, there are in Minnesota a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Minnesota Department of Education indicates that 52,242 handicapped children, out of a total of 122,665 children, were not receiving an education to meet their needs. More recent data, reported by the Department in March, 1974 for the 1973-74 school year, indicated that although substantial progress has been made, there are still over 17,000 children waiting for their opportunity to receive special education. In considering this situation, it is important to note that Minnesota law requires that these children be educated.

MISSISSIPPI

At present, there are in Mississippi a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Mississippi Department of Education indicates that out of a total of 116,066 handicapped children, only 16,587, less than 15 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that only about an additional 4,500 handicapped children would be served, leaving the vast majority of these children still waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Mississippi mandating that all eligible handicapped children be provided with an appropriate education. Despite the large number of children still needing service, state appropriations for the education of the handicapped totaled \$7.1 million for 1973-74, an increase of only \$1.7 million from 1972-73.

MISSOURI

At present, there are in Missouri a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Missouri Department of Elementary and Secondary Education indicates that only 65,110 handicapped children out of a total of 221,578 children, less than a third, are receiving an education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number to be served would be little different from the 1971-72 level of service. In considering this situation, it must be emphasized that with the passage of H.R. 474, the Missouri legislature placed in force a mandate that all eligible handicapped children must be provided with an appropriate public education. The statute also provides that this level of service must be provided by September, 1974. Despite the large number of children still needing service, state appropriations for the education of handicapped children increased only \$4.5 million from 1971-72 to \$18.5 million for the 1973-74 school year. The educational dilemma facing Missouri's handicapped children has been considered sufficiently serious to lead to the filing of a class action right to education lawsuit. *Radley v. Missouri* (Civil No. 73C556(3), E.D. Mo., November 1, 1973). The suit was dismissed in February, 1974 with the court holding that the presence of the statute rendered the issues moot in that the court could not improve on the implementation schedule or approach to the problem mandated by H.R. 474.

MONTANA

At present, there are in Montana a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Montana Office of Public Instruction indicates that out of a total of 23,480 handicapped children, only 5,358, less than a quarter, were receiving a public education designed to meet their needs. Projections done by the Office of Public Instruction for the 1972-73 school year predicted that only about an additional 3,000 would be served, still leaving 15,000 handicapped children waiting

for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Montana mandating that all eligible handicapped children be provided with an appropriate education by 1979. Despite the large number of children still needing service, state appropriations for the education of the handicapped totaled \$10.5 million for 1973-74, an increase of only \$3.3 million from 1972-73.

NEBRASKA

At present, there are in Nebraska a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Nebraska Department of Education indicates that out of a total of 93,568 handicapped children, only 23,734, about a fourth, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 5,000 handicapped children would be served, there would still be about 65,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Nebraska mandating that all eligible handicapped children be provided with an appropriate education by 1976. Despite the large number of children still needing service, state appropriations for the education of the handicapped totaled \$4.7 million for 1973-74, an increase of only \$1.1 million from 1971-72.

NEVADA

At present, there are in Nevada a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Nevada Department of Education indicates that out of a total of 13,640 handicapped children, only 6,300, about half, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number of handicapped children to be served would be little different from the 1971-72 level of service. In considering this situation, it must be emphasized that law is presently in force in Nevada mandating that all eligible handicapped children be provided with an appropriate education. The educational dilemma facing Nevada's handicapped children and their families has been considered sufficiently serious to lead to the filing of a pending class action right to education lawsuit, *Brandt v. Nevada* (Civil No. R-2779, D. Nev., Filed Dec. 22, 1972), on behalf of all of Nevada's handicapped children.

NEW HAMPSHIRE

At present, there are in New Hampshire a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the New Hampshire State Department of Education indicates that out of a total of 19,374 handicapped children, only 6,070, about 31 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 4,300 handicapped children would be served, there would still be about 9,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in New Hampshire mandating that all eligible handicapped children be provided with an appropriate education.

NEW JERSEY

At present, there are in New Jersey a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the New Jersey Department of Education indicates that 131,866 children, out of a total of 231,055 handicapped children, more than half, were not receiving an education to meet their needs. Projections done by the Department for the 1972-73 school year indicated that although another 60,000 children were expected to be served, there still remained about 80,000 handicapped children for whom special programs were not planned to be available. In considering this situation, it must be emphasized that law is presently in force in New Jersey mandating that all eligible handicapped children be provided with an appropriate public education.

NEW MEXICO

At present, there are in New Mexico a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the New Mexico Department of Education indicates that out of a total of 53,126 handicapped children, only 8,655, approximately 16 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that only about an additional 1,500 children would be served, leaving over 40,000 handicapped children still waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in New Mexico mandating that all eligible handicapped children be provided with an appropriate education by 1977. Despite the large number of children still needing service, state appropriations for the education of the handicapped totaled \$1 million for 1973-74 an increase of only \$3.5 million from 1971-72.

NEW YORK

At present, there are in New York a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Department of Education indicates that 151,592 handicapped children, out of a total of 372,811 children, were not receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that only about an additional 15,000 handicapped children would receive service leaving about 135,000 handicapped children still waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in New York mandating that all eligible handicapped children be provided with an appropriate public education. The intent and responsibility of the state has been reinforced by New York Education Commissioner Nyquist when he ordered New York City in *Reid v. Board of Education of the City of New York* (No. 8742. Commissioner of Education of New York, Nov. 26, 1973), a class action right to education suit, to provide publicly supported, suitable education programs for all handicapped children. The New York City public schools estimate that it will immediately cost them \$60 million to implement the decision.

NORTH CAROLINA

At present, there are in North Carolina a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the North Carolina Department of Education indicates that out of a total of 172,580 handicapped children, only 73,789, less than half, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 10,000 handicapped would be served, there would still be about 90,000 children still waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in North Carolina mandating that all eligible handicapped children be provided with an appropriate education. Specifically, the legislature in its last session adopted law that declared "that the policy of the state is to ensure every child a fair and full opportunity to reach his full potential . . ." (CH 1293, 1973). The educational dilemma facing North Carolina's handicapped children and their families has been considered sufficiently serious to lead to the filing of a pending class action right to education lawsuit, *North Carolina Association for Retarded Children v. North Carolina* (Civil No. 3050, E.D.N.C. filed May 18, 1973) on behalf of all North Carolina's mentally retarded children. You should also know that the amount of state appropriations available for the education of the handicapped for the 1973-74 school year was \$36 million, an increase of only \$9 million since the 1971-72 school year.

NORTH DAKOTA

At present, there are in North Dakota a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the North Dakota Department of Public Instruction indicates that out of a total of 47,215 handicapped children, only 8,947, less than a fifth, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number of handicapped children to be served would be little different from the 1971-72

level of service. In considering this situation, it must be emphasized that law is presently in force in North Dakota mandating that all eligible handicapped children be provided with an appropriate education by 1980. The educational dilemma facing North Dakota's handicapped children and their families has been considered sufficiently serious to lead to the filing of a pending class action right-to-education lawsuit, *North Dakota Association for Retarded Children v. Peterson* (Civil No. 1196, D.N.D., Filed Nov. 28, 1972), on behalf of all North Dakota's handicapped children. You should also know that in another recently concluded individual action the North Dakota Supreme Court held that the plaintiff physically handicapped child "is entitled to an equal educational opportunity under the constitution of North Dakota, and that depriving her of that opportunity would be an unconstitutional denial of equal protection under the Federal and State constitutions and of the Due Process and Privileges and Immunities Clauses of the North Dakota Constitution," (*in the interest of G.H., a child v. G.H., B.H., F.H., Williston School District, et al.* (Civil No. 8930, N.D.S.C., April 30, 1974)). Despite the large number of children still needing service, state appropriations for the education of the handicapped totaled \$3 million for 1973-75 biennium, an increase of only \$1.6 million from 1971-73 biennium.

OHIO

At present, there are in Ohio a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Ohio Department of Education indicates that out of a total of 335,898 handicapped children, slightly over half, 175,300 children were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that only an additional 16,000 handicapped children would be provided with a special education, leaving approximately 144,000 children waiting for their opportunity. It is clear that even though state appropriations have increased from \$65.5 million in 1971-72 to \$90.4 million for 1973-74, an increase of 30 percent, 45 percent of the handicapped children still remain unserved. The educational dilemma facing Ohio's handicapped children has been considered sufficiently serious to lead to the recent filing of a pending class action right-to-education lawsuit, *The Cuyahoga County Association for Retarded Children and Adults, et al. v. Martin Essex, et al.* (Civil Action No. C74-587 N.D. Ohio, filed June 28, 1974).

OKLAHOMA

At present, there are in Oklahoma a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Oklahoma State Department of Education indicates that out of a total of 144,586 handicapped children, only 23,746, about 16 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 10,000 handicapped children would be served, there would still be over 110,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Oklahoma mandating that all eligible handicapped children be provided with an appropriate education.

OREGON

At present, there are in Oregon a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Oregon Board of Education indicates that 26,274 handicapped children, out of a total of 48,044 children, were not receiving a public education designed to meet their needs. Projections done by the Board for the 1972-73 school year predicted that while an additional 3,500 handicapped children would be served there would still be over 18,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Oregon mandating that all eligible handicapped children be provided with an appropriate education.

PENNSYLVANIA

At present, there are in Pennsylvania a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Pennsylvania Department of Education indicates that 108,619

handicapped children out of a total of 265,449 children were not receiving a public education designed to meet their needs. Statistics produced by the Department based on December, 1972 enrollments were that despite service expansion to an additional 60,000 children since the 1971-72 school year, there still remain close to 50,000 handicapped children who are waiting for their opportunity to receive a public education. In considering this situation, it must be emphasized that law is presently in force in Pennsylvania mandating that appropriate educational services be provided to every eligible handicapped child. This mandate was specifically reinforced for all mentally retarded children by the landmark right-to-education order achieved in the class action *PARC v. Commonwealth of Pennsylvania* (334 F. Supp. 1257, E.D. Pennsylvania 1971 and 343 F. Supp. E.D. Pennsylvania 1972) lawsuit.

RHODE ISLAND

At present, there are in Rhode Island a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Rhode Island Department of Education indicates that only 13,475 handicapped children, out of a total of 39,475 children, about a third, were receiving an education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that only about 6,000 additional handicapped children would receive the educational services they need, leaving about 20,000 handicapped children still waiting for their opportunity to receive a public education. The educational dilemma facing Rhode Island's handicapped children and their families has been considered sufficiently serious to lead to the filing of a pending class action right to education lawsuit, *Rhode Island Society for Autistic Children v. Reisman*, (C.A. No. 5081, D.R.I., Filed Dec. 1972) on behalf of all Rhode Island's handicapped children by the Rhode Island Society for Autistic Children.

SOUTH CAROLINA

At present, there are in South Carolina a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the South Carolina State Department of Education indicates that out of a total of 106,506 handicapped children, only 38,275, about 36 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 15,275 handicapped children would be served there would still be over 50,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in South Carolina mandating that all eligible handicapped children be provided with an appropriate education by 1977. Despite the large number of children still needing service, state appropriations for the education of the handicapped totaled \$16.5 million for 1973-74, an increase of only \$6.5 million from 1971-72.

SOUTH DAKOTA

At present, there are in South Dakota a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the South Dakota Department of Public Instruction indicates that out of a total of 17,795 handicapped children, only 4,414, about one-fourth, were receiving public education designed to meet their needs. While projections done by the Department for the 1972-73 school year predicted that an additional 7,500 children would be served there would still be over 5,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in South Dakota mandating that all handicapped children be provided with a public education.

TENNESSEE

At present, there are in Tennessee a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Tennessee State Department of Education indicates that out of a total of 131,903 handicapped children, only 49,173, less than 40 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number of handicapped children to be served would be little different from the 1971-72 level of service. In considering this situation, it must be emphasized that law is presently in force in Tennessee mandating that all eligible handicapped children be provided

with an appropriate education as of September, 1974. The educational dilemma facing Tennessee's handicapped children and their families has been considered sufficiently serious to lead to the filing of a class action right to education lawsuit, *Rainey v. Tennessee Department of Education* (No. A-3100 Chancery Court of Davidson, County, Tenn., Filed Nov. 6, 1973), on behalf of all of Tennessee's handicapped children. The suit was concluded in July, 1974 with a consent order that again requires that all eligible handicapped children be provided with an appropriate education.

TEXAS

At present, there are in Texas a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Texas Education Agency indicates that out of a total of 777,731 handicapped children, only 175,662, less than a fourth, were receiving a public education designed to meet their needs. Projections done by the Agency for the 1972-73 school year predicted that while an additional 21,000 handicapped would be served there would still be over 580,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Texas mandating that all eligible handicapped children be provided with an appropriate education.

UTAH

At present, there are in Utah a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Utah State Department of Public Instruction indicated that 17,100 handicapped children, out of a total of 44,179 children, were not receiving a public education designed to meet their needs. Projections done by the Department for 1972-73 school year predicted that the total number of handicapped children to be served would be little different from the 1971-72 level of service. In considering this situation, it must be emphasized that law is presently in force in Utah mandating that all eligible handicapped children be provided with an appropriate education.

VERMONT

At present, there are in Vermont a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Vermont Department of Education indicates that only 4,612 handicapped children, out of a total of 20,631 children, less than a fourth, were receiving an education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number to be served would be little different from the 1971-72 level of service. In considering this situation, it must be emphasized that law is presently in force in Vermont mandating that appropriate educational services be provided to every eligible handicapped child.

VIRGINIA

At present, there are in Virginia a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Virginia State Department of Education indicates that out of a total of 146,748 handicapped children, only 44,768, about 30 percent, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that while an additional 3,000 handicapped would be served, there would still be about 98,000 children waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Virginia mandating that all eligible handicapped children be provided with an appropriate education. A target date for compliance by 1976-77 has been established by the Department through regulations. Despite the large number of children still needing service, state appropriations for the education of the handicapped increased by \$4 million from 1971-72 to \$12.6 million for the 1973-74 school year.

WASHINGTON

At present, there are in Washington many handicapped children who are not receiving an appropriate public education. Data collected by the Department of Public Instruction indicates that 10,702 handicapped children, which includes the learning disabled category of exceptionality, are presently unserved and for whom the Department desires to serve with an appropriate education during the 1975-77

biennium. There are, in addition, another 12,000 unserved learning disabled handicapped children for whom the state plans to provide programs after the 1975-77 biennium. In order to provide children the services required and planned for the 1975-77 biennium, an additional 36 million dollars is needed, excluding any inflationary factors. While the state has continued to expand services, additional funds are not expected to surpass 16 million dollars and may, in fact, fall short of expectations. Therefore, funding will fall at least 20 million dollars short of the level required to implement the state's plan. In considering this situation it must be emphasized that law is presently in force in the state of Washington which mandates that all handicapped children be provided with an appropriate education.

WEST VIRGINIA

At present, there are in West Virginia a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the West Virginia Department of Education indicates that only 15,161 handicapped children, out of a total of 80,561 children, less than a fifth, were receiving an education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number to be served would be little different from the 1971-72 level of service. In considering this situation, it must be emphasized that with the passage by the state legislature of H.B. 1271, West Virginia has mandated that appropriate public education must be provided to all eligible handicapped children. The legislature also by this Act ordered compliance with the mandate in September of this school year.

WISCONSIN

At present, there are in Wisconsin, a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Department of Public Instruction indicates that only 66,230 children out of a total of 155,813 handicapped children, considerably less than half, were receiving an education to meet their needs. Statistics for the 1972-73 school year show that the total number to be served is 55 percent, little different from the 1971-72 level of service. In considering this situation, it must be emphasized that with the passage by the legislature of Chapter 89, Wisconsin has mandated that appropriate public education must be provided to all eligible handicapped children. This mandate requiring that these services must be made available beginning with the 1974-75 school year was reinforced and cited in a District Court decision in *Panitch v. Wisconsin* (No. 72-C-461 D. Wis.), a class action right to education lawsuit.

WYOMING

At present, there are in Wyoming a great many handicapped children who are not receiving an appropriate public education. Data collected for the 1971-72 school year by the Wyoming State Department of Education indicates that out of a total of 18,475 handicapped children, only 5,665, less than a third, were receiving a public education designed to meet their needs. Projections done by the Department for the 1972-73 school year predicted that the total number of handicapped children to be served would be little different from the 1971-72 level of services and that over 12,000 handicapped children would still be waiting for their opportunity to receive a meaningful public education. In considering this situation, it must be emphasized that law is presently in force in Wyoming mandating that all eligible handicapped children be provided with an appropriate education.

STATE STATUTORY RESPONSIBILITIES FOR THE EDUCATION OF HANDICAPPED CHILDREN—AUG. 21, 1974

[This chart was prepared by the Council for Exceptional Children's State/Federal Information Clearinghouse for Exceptional Children. Current State special education statutes were analyzed and direct contact was made with selected state directors of special education.]

State and type of mandation	Date of passage	Compliance date	Ages of eligibility	Categories of children not included in mandate
Alabama: Full planning and programming...	1971	1977	6 to 21	Profoundly retarded.
Alaska: Full program	1974		From age 3	
Arizona: Selective planning and programming.	1973	Sept. 1, 1976	5 to 21	Emotionally handicapped.
Arkansas: Full planning and programming ¹ .	1973	1979, 1980	6 to 21	
California: Selective			6 to 21 ¹	Educationally handicapped; emotionally disturbed, learning disabled.
Colorado: Full planning and programming...	1973	July 1, 1975	5 to 21	
Connecticut: Full planning and programming.	1966		4 to 21 ¹	
Delaware: Full program, wherever possible			4 to 21	Severely mentally or physically handicapped.
District of Columbia: No statute—Court order, full program.	1972	1972	Form age 6	
Florida: Full program		1973 ⁴	3—No maximum, 13 yr guaranteed.	
Georgia: Full planning and programming...	1968	1975, 1976	3 to 20	Profoundly retarded.
Hawaii: Full program	1949		5 to 20	
Idaho: Full program ⁵	1972		6 to 21	
Illinois: Full program	1965	July 1, 1969	3 to 21 ⁶	
Indiana: Full planning and programming	1969	1973	6 to 18	
Iowa: Full program, if reasonably possible	1974		Birth to 21	
Kansas: Full planning and programming	1974	1979 ⁷	Developmentally disabled, birth, 21.	
Kentucky:				
Planning and programming	1970	1974	(3)	
Petition (trainable mentally retarded only).	1962		6 to 21	Other than trainable mentally retarded.
Louisiana: Court order—Orleans Parish only; Selective for mentally retarded. Otherwise, permissive.	1973	1973	6 to 21 ⁸	Other than mentally retarded.
Maine: Full planning and programming	1973	1975 ¹⁰	5 to 20	
Maryland: Full planning and programming	1973	1979 ¹¹	(12)	
Massachusetts: Full planning and programming.	1972	Sept. 1, 1974	3 to 21	
Michigan: Full planning and programming	1971	1973–1974	Birth to 25	
Minnesota: Full program		July 2, 1972 ¹²	5 to 21	
Mississippi: Permissive			5 to 21	
Missouri: Full planning and programming	1973		5 to 21	
Montana: Full program ¹⁴	1974	July 1, 1979	6 to 21	
Nebraska: Full planning and programming	1973	Oct. 1, 1976 ¹⁵	5 to 18	
Nevada: Full program	1973		5 to 18 ¹⁶	
New Hampshire: Full program			Birth to 21	
New Jersey: Full program	1954		5 to 20	
New Mexico: Full planning and programming	1972	1976 to 77	6 to 21 ¹⁸	
New York:				
Court order: Full program (New York City only).	1973	1973	5 to 21	
Conditional: 10 or more children who can be grouped homogeneously in same class.			5 to 21	Profoundly retarded.
North Carolina: Full planning	1974	(19)	Birth to adulthood. ²⁰	
North Dakota: Full planning and programming.	1973	July 1, 1980 ²¹	6 to 21	
Ohio:				
Selective, by petition (8 or more crippled or educable mentally retarded children in district).			From age 5	Other than crippled or educable mentally retarded.
Selective planning	1972	1973	6 to 18 ²²	Trainable or profoundly mentally retarded.
Oklahoma: Full program	1971	Sept. 1, 1970	4 to 21 ²³	
Oregon: Full program	1973		EMR: 6 to 21, others: birth 21.	
Pennsylvania:				
Court order: Selective (mentally retarded only).	1971–72	September 1972	6 to 21 ²⁴	Other than mentally retarded.
Full planning and programming	1966	1966	6 to 21	
Rhode Island: Full program		1964 ²⁵	3 to 21 ²⁶	
South Carolina: Full planning and programming.	1972	1977	6 to 21 ²⁷	
South Dakota: Full program	1972		Birth to 21	
Tennessee: Full planning and programming	1972	1974 to 1975	4 to 21	
Texas: Full program ²⁸	1969	1976 to 1977 ²⁹	3 to 21	

See footnotes at end of table.

**STATE STATUTORY RESPONSIBILITIES FOR THE EDUCATION OF HANDICAPPED CHILDREN—AUG. 21,
1974—Continued**

[This chart was prepared by the Council for Exceptional Children's State/Federal Information Clearinghouse for Exceptional Children. Current State special education statutes were analyzed and direct contact was made with selected state directors of special education]—Continued

State and type of mandate	Date of passage	Compliance date	Ages of eligibility	Categories of children not included in mandate
Utah: Full program.....	1969		6 to 18.....	
Vermont: Full program.....	1972		Birth to 21.....	
Virginia: Full planning.....	1972	(*)	2 to 21.....	
Washington: Full program.....	1971		6 to 21.....	
West Virginia: Full program.....	1974	1974	5 to 23.....	
Wisconsin: Full planning and programming.....	1973	August 1974	3 to 21.....	
Wyoming: Full program.....	1969		6 to 21.....	

¹ Current statute is conditional: 5 or more similarly handicapped children in district. However, a 1973 Attorney General's opinion stated that the law mandating full planning and programming was effective July, 1973. If the State activates a kindergarten program for 5-year-old children, ages of eligibility will be 5 to 21.

² 5 to 21 for deaf, severely hard of hearing.

³ 3 to 21 for hearing impaired. Lower figure applies to age of child as of Jan. 1 of the school year.

⁴ 1973 law did not include profoundly retarded; however, a 1974 amendment brought these children under the provisions of the mandatory law. Compliance date for full services to these children is mandated for 1977-78.

⁵ Earlier (1963) law was mandatory for all handicapped children except trainable mentally retarded.

⁶ 5 to 21 for speech defective.

⁷ Developmentally disabled means retardation, cerebral palsy or epilepsy. For other disabilities, the State board is to determine ages of eligibility as part of the State plan. Compliance date is July 1, 1974, for developmentally disabled programs.

⁸ Disabilities and ages to be served were to be determined as part of the State plan.

⁹ Residents over age 21 who were not provided educational services as children must also be given education and training opportunities.

¹⁰ In cases of significant hardship the commissioner of education may waive enforcement until 1977.

¹¹ Court order sets deadline in September 1975.

¹² Services must begin as soon as the child can benefit from them, whether or not he is of school age.

¹³ Date on which trainable mentally retarded were included under the previously existing mandatory law.

¹⁴ Statute now in effect is selective and conditional: at least 10 educable mentally retarded, 7 trainable mentally retarded, or 10 physically handicapped in school district. Full mandate becomes effective July 1, 1979.

¹⁵ Acoustically handicapped, Oct. 1, 1974.

¹⁶ Aurally handicapped and visually handicapped: birth to 18.

¹⁷ Date of original mandatory law, which has since been amended to include all children.

¹⁸ Child must be 6 years old by Jan. 1 of school year.

¹⁹ Implementation date to be specified in preliminary State plan to be submitted to 1975 General Assembly.

²⁰ Deaf: To age 18, or to age 21 if need exists.

²¹ All children must be served as soon as they are identified as handicapped.

²² 3 to 18 for deaf, blind.

²³ 2 to 21 for blind, partially blind, deaf, hard of hearing.

²⁴ When programs are provided for pre-school age children, they must also be provided for mentally handicapped children the same age.

²⁵ For mentally retarded or multiply handicapped. Others, as defined in regulations. Compliance date established by regulations.

²⁶ 4 to 21 for hearing handicapped.

²⁷ The Texas Educational Agency is operating under the assumption that the law is mandatory, and has requested an opinion from the State attorney general on this question. Compliance date is as established by State policy if the law does not specify a compliance date.

²⁸ Within the limits of available funds and personnel.

²⁹ Sept. 1, 1976 established by regulations.

Note: Definition of the kinds of mandatory legislation used by states—Full program mandate: Such laws require that programs must be provided where children meet the criteria defining the exceptionality. Planning and programming mandate: This form includes required planning prior to required programming. Planning mandate: This kind of law mandates only a requirement for planning. Conditional mandate: This kind of law requires that certain conditions must be met in or by the local education district before mandate takes effect (this usually means that a certain number of children with like handicaps must reside in a district before the district is obliged to provide for them). Mandate by petition: This kind of law places the burden of responsibility for program development on the community in terms of parents and interested agencies who may petition school districts to provide programs. Selective mandate: In this case, not all disabilities are treated equally. Education is provided (mandated) for some, but not all categories of disabilities.

**A CONTINUING SUMMARY
OF PENDING AND COMPLETED LITIGATION
REGARDING THE EDUCATION OF
HANDICAPPED CHILDREN**

**Council for Exceptional Children
Reston, Virginia**

L

RIGHT TO AN EDUCATION

MILLS v. BOARD OF EDUCATION OF DISTRICT OF COLUMBIA, 348 F. Supp. 806 (D.D.C. 1972)

In August of 1972, a landmark decision was achieved in a right to education case in the District of Columbia. In *Mills v. Board of Education of District of Columbia*, the parents and guardians of seven District of Columbia children brought a class action suit against the Board of Education of the District, the Department of Human Resources, and the Mayor for failure to provide all children with a publicly supported education.

The plaintiff children ranged in age from seven to sixteen and were alleged by the public schools to present the following types of problems that led to the denial of their opportunity for an education: slightly brain damaged, hyperactive behavior, epileptic and mentally retarded, and mentally retarded with an orthopedic handicap. These children resided in public, residential institutions with no education program. The others lived with their families and when denied entrance to programs were placed on a waiting list for tuition grants to obtain a private educational program. However, in none of these cases were tuition grants provided.

Also at issue was the manner in which the children were denied entrance to or were excluded from public education programs. Specifically, the complaint said that "plaintiffs were so excluded without a formal determination of the basis for their exclusion and without provision for periodic review of their status. Plaintiff children merely have been labeled as behavior problems, emotionally disturbed, hyperactive." Further, it is pointed out that "the procedures by which plaintiffs are excluded or suspended from public school are arbitrary and do not conform to the due process requirements of the Fifth Amendment. Plaintiffs are excluded and suspended without: (a) notification as to the nature of the offense or status, any alternative or interim publicly supported education; (b) opportunity for representation, a hearing by an impartial arbiter, the presentation of witnesses; and (c) opportunity for periodic review of the necessity for continued exclusion or suspension."

A history of events that transpired between the city and the attorneys for the plaintiffs immediately prior to the filing of the suit publicly acknowledged the Board of Education's legal and moral responsibility to educate all excluded children, and although they were provided with numerous opportunities to provide services to plaintiff children, the Board failed to do so.

On December 20, 1971, the court issued a stipulated agreement and order that provided for the following:

1. The named plaintiffs were to be provided with a publicly supported education by January 3, 1972.
2. The defendants by January 3, 1972, had to provide a list showing (for every child of school age not receiving a publicly supported education because of suspension, expulsion or any other denial of placement): the name of the child's parents or guardian, the child's name, age, address, and telephone number, the date that services were officially denied; a breakdown of the list on the basis of the "alleged causal characteristics for such non-attendance;" and finally, the total number of such children.
3. By January 3, the defendants were also to initiate efforts to identify all other members of the class not previously known. The defendants were to provide the plaintiffs' attorneys with the names, addresses, and telephone numbers of the additionally identified children by February 1, 1972.
4. The plaintiffs and defendants were to consider the selection of a master to deal with special questions arising out of this order.

On August 1, 1972, Judge Weedy issued a Memorandum, Opinion, Judgment and Decree on this case which in essence supported all arguments brought by the plaintiffs. This decision is particularly significant since it applies not to a single category of handicapped children, but to all handicapped children.

At the outset, the opinion contained a declaration of the constitutional right of all children regardless of any exceptional condition or handicap to a publicly supported education. A second declaration stated that the defendants' rules, policies, and practices which exclude children without provision for adequate and immediate alternative educational services and the absence of prior hearing and review of placement procedures denied the plaintiffs and the class rights of due process and equal protection of the law.

In this opinion, Judge Weedy addressed a number of key points relating to issues that are not unique to the District of Columbia but are common throughout the nation. Initially he commented on the fact that parents who do not comply with the District of Columbia compulsory school attendance law are committing a criminal offense. He said: "The court need not belabor the fact that requiring parents to see that their children attend school under pain of criminal penalties presupposes that an educational opportunity will be made available to the children. . . . Thus the Board of Education has an obligation to provide whatever specialized instruction that will benefit the child. By failing to provide plaintiffs and their class the publicly-supported specialized education to which they are entitled, the Board of Education violates the statutes and its own regulations."

The defendants claimed in response to the complaint that it would be impossible for them to afford plaintiffs the relief sought unless the Congress appropriated needed funds, or funds were diverted from other educational services for which they had been appropriated. The court responded: "The defendants are required by the Constitution of the United States, the District of Columbia Code, and their own regulations to provide a publicly-supported education for these 'exceptional' children. Their failure to fulfill this clear duty to include and retain these children in the public school system, or otherwise provide them with publicly-supported education, and their failure to afford them due process hearings and periodic review, cannot be excused by the claim that there are insufficient funds. In *Goldberg v. Kelly*, 397 U.S. 254 (1969) the Supreme Court, in a case that involved the right of a welfare recipient to a hearing before termination of his benefits, held that Constitutional rights must be afforded citizens despite the greater expense involved. . . . Similarly the District of Columbia's interest in educating the excluded children clearly must outweigh its interest in preserving its financial resources. If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly-supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child."

Regarding the appointment of a master the court commented: "Despite the defendants' failure to abide by the provisions of the Court's previous orders in this case and despite the defendants' continuing failure to provide an education for these children, the Court is reluctant to assign to itself the responsibility of administering this or any other aspect of the public school system of the District of Columbia through the vehicle of a special master. Nevertheless, inaction or delay on the part of the defendants, or failure by the defendants to implement the judgment and decree herein within the time specified therein will result in the immediate appointment of a special master to oversee and direct such implementation under the direction of this Court."

Specifically, the judgment contained the following

1. "That no child eligible for a publicly-supported education in the District of Columbia public schools shall be excluded from a regular public school assignment by a Rule, Policy or Practice of the Board of Education of the District of Columbia or its agents unless such child is provided: (a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants, and (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative."
2. An injunction to prevent the maintenance, enforcement or continuing effect of any rules, policies and practices which violate the conditions set in one (above).
3. Every school age child residing in the District of Columbia shall be provided "... a free and suitable publicly-supported education regardless of the degree of the child's mental, physical or emotional disability or impairment ..." within 30 days of the order.
4. Children may not be suspended from school for disciplinary reasons for more than two days without a hearing and provision for his education during the suspension.
5. Within 25 days of the order, the defendants shall present to the court a list of every additionally identified child with data about his family, residence, educational status, and a list of the reasons for non-attendance.
6. Within 20 days of the order individual placement programs including suitable educational placements and compensatory education programs for each child are to be submitted to the court.
7. Within 45 days of the order, a comprehensive plan providing for the identification, notification, assessment, and placement of the children will be submitted to the court. The plan will also contain information about the curriculum, educational objectives, and personnel qualifications.
8. Within 45 days of the order, a progress report must be submitted to the court.
9. Precise directions as to the provision of notice and due process including the conduct of hearings.

Finally, Judge Weedy retained jurisdiction in the action "to allow for implementation, modification and enforcement of this Judgment and Decree as may be required."

In December, 1973, a motion for compliance with the decree was filed with the court due to alleged failure of the school system to honor tuition grants ordered by hearing officers. A request was made for a master to oversee implementation, which is alleged to be floundering because of a lack of funds. The action is still pending.

PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN v. COMMONWEALTH OF PENNSYLVANIA, 334 F. Supp. 1267 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972).

In January, 1971, the Pennsylvania Association for Retarded Children (P.A.R.C.) brought suit against Pennsylvania for the state's failure to provide all retarded children access to a free public education. In addition to P.A.R.C., the plaintiffs included 14 mentally retarded children of school age who were representing themselves and "all others similarly situated," i.e. all other retarded children in the state. The defendants included the State Secretaries of Education and Public Welfare, the State Board of Education, and 13 named school districts, representing the class of all of Pennsylvania's school districts.

The suit, heard by a three-judge panel in the Eastern District Court of Pennsylvania, specifically questioned public policy as expressed in law, policies, and practices which excluded, postponed, or denied free access to public education opportunities to school age mentally retarded children who could benefit from such education.

Expert witnesses presented testimony focusing on the following major points

1. The provision of systematic education programs to mentally retarded children will produce learning.
2. Education cannot be defined solely as the provision of academic experiences to children. Rather, education must be seen as a continuous process by which individuals learn to cope and function within their environment. Thus, for children to learn to clothe and feed themselves is a legitimate outcome achievable through an educational program.
3. The earlier these children are provided with educational experiences, the greater the amount of learning that can be predicted.

A June, 1971 stipulation and order and an October, 1971 injunction, consent agreement, and order resolved the suit. The June stipulation focused on the provision of due process rights to children who are or are thought to be mentally retarded. The decree stated specifically that no such child could be denied admission to a public school program or have his educational status changed without first being accorded notice and the opportunity of a due process hearing. "Change in educational status" has been defined as "assignment or re-assignment, based on the fact that the child is mentally retarded or thought to be mentally retarded, to one of the following educational assignments: regular education, special education, or to no assignment, or from one type of special education to another." The full due process procedure from notifying parents that their child is being considered for a change in educational status to the completion of a formal hearing was detailed in the June decree. All of the due process procedures went into effect on June 18, 1971.

The October decrees provided that the state would not apply any law which would postpone, terminate, or deny mentally retarded children access to a publicly-supported education, including a public school program, tuition or tuition maintenance, and homebound instruction. By October, 1971, the plaintiff children were to have been reevaluated and placed in programs, and by September, 1972, all retarded children between the ages of six and 21 were to be provided a publicly-supported education.

Local districts providing preschool education to any children are required to provide the same for mentally retarded children. The decree also stated that it was most desirable to educate these children in a program most like that provided to non-handicapped children. Further requirements include the assignment of supervision of educational programs in institutions to the State Department of Education, the automatic re-evaluation of all children placed on homebound instruction every three months, and a schedule the state must follow that will result in the placement of all retarded children in programs by September 1, 1972. Finally, two masters or experts were appointed by the court to oversee the development of plans to meet the requirements of the order and agreement.

The June and October decrees were formally finalized by the court on May 5, 1972.

LEBANKS v. SPEARS, Civil Action No. 71-2987 (E.D., La. April 24, 1973)

Eight black children classified as mentally retarded have brought suit against the Orleans Parish (New Orleans) School Board and the superintendent of schools on the basis of the following alleged practices:

1. Failure to provide any "education or instruction" to some of the children on a lengthy waiting list for special education programs, and also denial of educational opportunities to other retarded children excluded from school and not maintained on any list for readmittance.
2. Maintenance of a policy and practice of not placing children beyond the age of 13 in special education programs.
3. The unequal opportunity for an education provided to all children who are classified as mentally retarded; unequal opportunity between children classified as mentally retarded and normal; and unequal opportunity between black and white mentally retarded children.
4. Failure "... to advise retarded children of a right to a fair and impartial hearing or to accord them such a hearing with respect to the decision classifying them as 'mentally retarded,' the decision excluding them from attending regular classes, and the decision excluding them from attending schools geared to their special needs."
5. Classification of certain children as mentally retarded is done arbitrarily and without standards or "valid reasons." It is further alleged that the tests and procedures used in the classification process discriminate against black children.
6. The failure to re-evaluate children classified as retarded to determine if a change in their educational status is needed.

The attorneys for the plaintiffs in summary indicate that many of the alleged practices of the parish "violate the equal protection and due process provisions of the Fourteenth Amendment." They further state the "continued deprivation (of education) will render each plaintiff and member of the class functionally useless in our society; each day leaves them further behind their more fortunate peers."

The relief originally sought by the plaintiffs includes the following:

1. A \$20,000.00 damage award for each plaintiff.
2. Preliminary and permanent injunction to prevent classification of the plaintiffs and their class as mentally retarded through use of procedures and standards that are arbitrary, capricious, and biased, the exclusion of the plaintiffs and their class from the opportunity to receive education designed to meet their needs; discrimination "in the allocation of opportunities for special education, between plaintiffs, and other black retarded children, and white retarded children;" the classification of plaintiffs and their class as retarded and their exclusion from school or special education classes without a provision of a full, fair, and adequate hearing which meets the requirements of due process of law."

This case never came to trial since the defendants agreed to a consent order meeting the majority of the suit's demands proposed April 24, 1973 and made effective on May 31. Among its features are the following:

1. All children not presently served by public schools who are or are suspected of being retarded "shall be given: (a) evaluation and an educational plan, and periodic review and; (b) provision of a free public program of education and training appropriate to their age and mental status." The agreement established specific steps which must be taken to inform the community about the rights of the retarded children to an education.
2. The parent or guardian of any child who suspects the child is or may be retarded shall have the right to hearing evaluation and educational plan and periodic review and; provision of a free public program and training appropriate to his age and mental status. . . ."
3. "No child in a regular school class shall be referred by the schools for evaluation for possible retardation, labeled as retarded, recommended for special education placement, placed in special classes or excluded: . . . without evaluation and development of a special education plan and periodic review and provision of a free public program of education and training appropriate to his age and mental status."
4. All evaluations and determinations of appropriate programs of education shall be made under the presumption that placement in a regular public school class with appropriate support services is preferable to placement in a special class. Similarly special class placement is preferable to a community training facility. Last in order of preference is a residential institution.
5. Perhaps the most unique element of this decision and one which may be repeated in other cases is that education and training opportunities must be made available to residents "Over 21 years of age who were not provided educational services when children . . ."

6. Establishes specific provisions governing the movement, placement, and review of children in appropriate Programs of appropriate education regardless of the agency providing the programs.

7. Established specific procedures for the suspension of mentally retarded children who present disciplinary problems to the schools that limit the frequency and duration of the suspension and govern the manner in which subsequent placements are to be made and reviewed.

The court in approving the agreement has specified that compliance will occur under the continuing supervision of the court.

The claim for money damages was dropped by the plaintiffs in the course of developing the agreement.

*Parish is the Louisiana term for county.

CATHOLIC SOCIAL SERVICES, INC. v. BOARD OF EDUCATION, administrative proceeding before the Delaware State Board of Education (filed August 24, 1971).

Catholic Social Services of Delaware as part of its responsibilities places and supervises dependent children in foster homes. In the process of trying to obtain educational services for handicapped children, the agency found "... the special education facilities in Delaware totally inadequate."

The four children named included:

Jimmy, age 10, a child of average intelligence who has had emotional and behavioral problems which from the beginning of his school career, indicated a need for special education. Although special education program placement was recommended on two separate occasions, the lack of programs available prevented enrollment.

Debbie, age 13, has been diagnosed as a seriously visually handicapped child of normal intelligence who, because of her handicap, cannot learn normally. She has had a limited opportunity to participate in a special education program, but as of September, 1971, none was available.

Jehnnie, age 13, has for years demonstrated disruptive behavior in school which led, because of his teachers' inability to "cope" with him, to a recommendation for placement in an educational program with a small student-teacher ratio, possibly in a class of "emotionally complex children." Until the time of the suit, he had not been able to receive such training.

Adrian, age 18, has a long history of psychiatric disability which prevented him from receiving public education. Following the abusive attempts of his mother to enroll him in school, he was ultimately placed in a state residential facility for emotionally disturbed children. This placement was made without psychological testing and with no opportunity for a hearing to determine whether there were adequate school facilities available for him. Approximately one year later he was brought to the Delaware Family Court on the charge of being "uncontrolled," and after no judgment as to his guilt or innocence, he was returned to the residential school on probationary status. If his behavior did not improve, as judged by the staff, he could later be committed to the State School for Delinquent Children. In July, 1970, the latter transfer was made without Adrian being represented by counsel or being advised of this right. Since that time, Adrian has received "some educational service . . . but little or no specific training."

The complaint quotes the Constitution and laws of Delaware that guarantee all children the right to an education. The Delaware Code specifies that: "The State Board of Education and the local school board shall provide and maintain, under appropriate regulations, special classes and facilities wherever possible to meet the needs of all handicapped, gifted and talented children recommended for special education or training who come from any geographic area." Further, the Code defines handicapped children as those children "between the chronological ages of four and 21 who are physically handicapped or maladjusted or mentally handicapped."

Because the respondents (Board of Education and others named in the complaint) have failed to provide the legally guaranteed education to the named children, the complaint urges that the respondents:

1. Declare that the petitioners have been deprived of rightful educational facilities and opportunities.
2. Provide special educational facilities for the named petitioners.
3. Immediately conduct a full and complete investigation into the public school system of Delaware to determine the number of youths being deprived of special educational facilities and devise recommendations for the implementation of a program of special education for these children.
4. Conduct a full hearing allowing petitioners to subpoena and cross-examine witnesses and allow pre-hearing discovery including interrogatories.
5. Provide compensatory special education for petitioners for the years they were denied an education.

The four named children were placed in education programs prior to the taking of formal legal action.

REID v. BOARD OF EDUCATION OF THE CITY OF NEW YORK, 483 F. 2d, 238 (2d Cir. 1971).

REID v. BOARD OF EDUCATION OF THE CITY OF NEW YORK, Administrative Procedure Before the State Commissioner of Education No. 8742, argued January 16, 1973, decided November 28, 1973.

This case action was originally brought in Federal Court to prevent the New York Board of Education from denying "brain-injured" children adequate and equal educational opportunities. Plaintiffs alleged that undue delays in screening and placing these children prevented them from receiving free education in appropriate special classes, thus infringing upon their state statutory and constitutional rights, guarantee of equal protection and due process under the Fourteenth Amendment.

In this 1971 case it was alleged that over 400 children in New York City were, on the basis of a preliminary diagnosis, identified as brain damaged, but could not receive an appropriate educational placement until they participated in final screening. It would take two years to determine the eligibility of all these children. An additional group of 200 children were found eligible but were awaiting special class placement.

The plaintiffs further alleged that the deprivation of the constitutional right to a free public education and due process operated to severely injure the plaintiffs and other members of their class by placing them generally in regular classes which constituted no more than "outdoor" care for these children who were in need of special attention and instruction. In addition, providing the plaintiffs with one or two hours per week of home instruction is equally inadequate. It was further argued that if immediate relief was not forthcoming all members of the class would be irreparably injured because every day spent either in a regular school class or at home delayed the start of special instruction.

On June 22, 1971, Judge Metzner, of the U.S. District Court for the Southern District of New York, denied the motion for a preliminary injunction and granted the defendants' motion to dismiss. The Court applied the *abstention doctrine*, reasoning that since there was no charge of deliberate discrimination, this was a case where the State Court could provide an adequate remedy and where resort to the Federal Courts was unnecessary.

On appeal, the Second Circuit Court of Appeals, ruling on the District Court order, on December 14, 1971 decided that federal jurisdiction should have been retained pending a determination of the state's claims in the New York State Courts.

In January 1972, a class action administrative hearing was held before the New York State Commissioner of Education in accordance with the opinions of the United States Court of Appeals for the second circuit on December 14, 1971 and January 13, 1972. "The order directed the United States District Court for the Southern District of New York to abstain from declining those claims of plaintiffs which were based on the United States Constitution pending a determination by New York State's authorities of relevant but as yet unanswered questions of state law."

The substance of the new complaint submitted to the Commissioner concerns the alleged failure of the respondents (the New York City Board of Education) to "fulfill their obligation to provide the petitioners who represent all handicapped children, with suitable education services, facilities and/or programs in either a private or public school setting as mandated by the New York Constitution and education laws."

Petitioners in this action are nine school age children with learning disabilities attributed to brain injury and/or emotional disturbance, although two children also possess orthopedic handicaps. The class they represent is estimated to be 20,000 children. An additional petitioner is the New York Association for Brain Injured Children, a state-wide organization involved in promoting educational, medical, recreational programs and facilities, social research, and public education regarding the needs of brain injured children.

The named children range in age from seven to 12 and have school histories including misplacement, medical or other suspension from school with no provision for continuing instruction, multiple screening and evaluation sessions, miscommunication between the parents and school personnel, home instruction ranging from one to three hours a week, and long-term assignment to waiting lists for placement in public special education programs.

In addition to the Board of Education of the City of New York, respondents also include Harvey Scribner, Chancellor of the New York School District.

Specifically, it is alleged that respondents' violations of the law include "... failure to evaluate within a reasonable time in order to meet the child's educational needs, failure to place a handicapped child or failure to find a suitable placement, the unavailability of placements in violation of the mandate that education services, facilities and/or programs must be provided for handicapped children, suspension of handicapped children from classes without adequate notice or alternatives, unreasonable lapses of time between placements or between placements and evaluation, failure to endeavor to secure public or private school for a handicapped child placing the burden on parents to search for private school placements, provision of entirely unsuitable home instruction." Finally, it is alleged that petitioners and their class have been caused serious and irreparable harm.

The petition also contains the following arguments

1. The failure of the respondents to provide for the suitable education of the petitioners and their class and the manner in which this occurs including coercion of parents to withdraw their children from school, suspension of children without procedural safeguards and the time delay between screening, diagnosis, and placement places the burden of finding an education for their children on parents rather than the school's.
2. It is maintained by respondents that for the 20,000 handicapped children included in the class, placements are not made because "... they have not developed special classes which are suitable to the needs of those children" or they "... have classes suitable for that particular handicap but do not have room in them." It is also pointed out that 65,000 children are presently enrolled in city special education programs.
3. The home instruction program offered is not a suitable educational service because it was initially designed for children who needed physical isolation and not for children who require specialized learning situations including special personnel, equipment, and material. As stated in the petition "the lack of intensity of home instruction, the fact it is only offered a few hours a week to a child who needs a full day in the classroom so that he can learn and relearn, applying his learning daily and hourly, makes it dramatically unsuitable."

The petition seeks the following

1. "... immediate relief in the nature of suitable education services, facilities and/or programs beginning fall 1972" for all named children.
2. Similarly, all children in the class must be provided "... with suitable education services, facilities, and/or programs in a school and classroom environment beginning with the fall 1972 semester."

3. The relief requested in 1 and 2 may be provided . . . within a public school setting or by contracting with a private institution within the vicinity of the child's home for such services, facilities and/or programs pursuant . . . to state law.

4. The diagnosis and evaluation of . . . all children suspected of being handicapped in a prompt and timely manner."

5. All children heretofore found to be handicapped be provided with suitable education services, facilities, and/or programs in a school and classroom environment.

6. . . . provide all children now receiving home instruction with suitable education services, facilities, and/or programs in a classroom and school environment."

7. An order requiring . . . the respondents to submit a plan to the Commissioner, subject to this modification, approval, and continual supervision, to ensure compliance with the above orders . . . to include a complete listing of available services, facilities and/or programs, the number of children enrolled and attending public school special classes and classes in private institutions with which the respondents have contracted, the number of children on waiting lists for special classes and private school classes, an approximation of the number of children annually who may need special classes, the number of children in the screening units, the number of children on waiting lists or probably in need of screening, a projection in detail of the number of new classes and class spaces that must be made available for respondents to provide the relief herein granted, and further order that the plan specify the detailed timetable for screening, diagnosis, classification, and placement by respondents of petitioners and the class herein represented, and further order the inclusion in the plan of any other items not herein listed."

This proceeding was heard before a New York Commissioner of Education on January 16, 1973. As a result of the petitioner's allegation, New York State Commissioner of Education, Ewald B. Nyquist, ordered that an investigation of the school district to be conducted. The investigation which occurred in June and July, 1973 substantiated the charge that there are "numerous children residing within the respondent district whose educational needs are not being adequately served" in accordance with state law. It also disclosed the existence of a "Medical Discharge Register" which lists children who had been suspended and were not receiving educational services. The Commissioner said in a November 26 order: that children with handicaps and discipline problems who were placed on that list in lieu of appropriate education programs may never receive programs to meet their needs.

In the same order the Commissioner reported the following deficiencies in the New York City Public Schools:

Undue delays in examinations and diagnostic procedures. Failures to examine and diagnose handicaps. Failures to place handicapped children in suitable programs. Children placed on home instruction in violation of the purpose of home instruction. Children placed on home instruction who did not receive the required hours of personal instruction in accordance with the regulations of the Commissioner of Education. Handicapped children expelled from public school education for medical reasons when such medical reasons did not preclude benefits from educational settings. Incomplete or conflicting census data on the number of handicapped children residing in New York City. Inadequate means of informing parents of the processes related to special education services, and inadequate plans for parent involvement in effective planning and decisionmaking regarding their children. Suspension of handicapped children from classes without adequate notice or provisions for alternate educational services. Failures to provide available space and facilities for programs.

To rectify these inadequacies the Commissioner ordered that:

1. The "Medical Discharge Register" to be discontinued, and home instruction be used only in accordance with existing statutes. A list of students receiving home instruction and the reasons for the provisions of such programs must be submitted to the Commissioner.

2. "All students who have been diagnosed as handicapped be placed immediately in appropriate public school classes or, if public school classes are not available, in private schools under contract in accordance with" state

3. That plans for the following be submitted to the Commissioner by February 1, 1974: (a) eliminating waiting lists for diagnosis and placement; (b) regionalizing evaluation of the handicapped; (c) meeting the needs of the handicapped in secondary schools; and (d) notifying parents of available services and personnel.

Finally, the Commissioner retained jurisdiction of the petitioner's appeal.

DOE v. BOARD OF SCHOOL DIRECTORS, Civil Action No. 377-770 (Cir. Ct. Milwaukee County, filed April 7, 1970)

The plaintiffs in this class action are represented by John Doe, a 14-year-old trainable mentally retarded student. The suit against the Milwaukee Board of School Directors focused on the fact that although John Doe was tested by a school board psychologist who determined that he was mentally retarded and in need of placement in a class for the trainable mentally retarded, he was put on a waiting list for the program. It is alleged that this is a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

Plaintiffs argued that this violation occurred on two counts. First, John Doe, as a school-age resident of the city of Milwaukee, is guaranteed an education by the Wisconsin Constitution. It is pointed out that public education is provided to "the great bulk of Milwaukee children" without requiring them to spend varying and indefinite amounts of time on waiting lists waiting for an education."

The second alleged violation occurred because, under the law, the school directors are required "to establish schools sufficient to accommodate children of school age with various listed handicaps, including children with mental disabilities." It is further argued that at the same time of the complaint 400 trainable mentally retarded children were attending such classes. Thus, by denying the plaintiff participation in the program, the defendants are denying him equal protection of the law.

The plaintiffs sought:

1. A temporary order requiring immediate enrollment of plaintiffs in an appropriate class for trainable mentally retarded children.

2. An order enjoining the defendants from maintaining a waiting list that denies public education to those requiring special education

A temporary injunction was ordered and the public schools were required to admit the plaintiffs into the program for trainable mentally retarded children with all reasonable speed which was defined as 15 days. This order delivered in 1970 is still in effect.

MARLEGA v. MILWAUKEE BOARD OF SCHOOL DIRECTORS, Civil Action No. 70-C-8 (E.D. Wis. September 17, 1970)

This case, completed in 1970, was a class action suit with Douglas Marlega as the named plaintiff. He brought suit against the board of school directors of the public schools of Milwaukee on the basis of denial of constitutionally guaranteed rights of notice and due process.

At issue was the exclusion of Marlega from public school attendance because of alleged medical reasons involving hyperactivity "... without affording the parents or guardians an opportunity to contest the validity of the exclusion determination." Marlega, of average intelligence, was completely excluded from February 16, 1968, to October 7, 1968. His parents were not given justification for the exclusion, nor were they given any opportunity for a due process hearing. Throughout the period of exclusion, "... no alternative public schooling is furnished on a predictable basis" and "no periodic review of the condition of excluded students is apparently made nor is home instruction apparently provided on a regular basis."

The following was sought by the plaintiff:

1. a temporary restraining order to reinstate Marlega and his class in school;
2. an order to defendants to provide the plaintiff a due process hearing; and
3. an order to prevent the board of school directors of Milwaukee from excluding any children from school for medical reasons without first providing for a due process hearing except in emergency situations.

A temporary restraining order was awarded on January 14, 1970. On March 16, 1970, the Court ordered that no child could be excluded from a free public education on a full-time basis without a due process hearing. The school directors submitted to the court a proposed plan for the handling of all medically excluded children which was approved on September 17, 1970.

WOLF v. STATE LEGISLATURE OF THE STATE OF UTAH, Civil Action No. 192646 (Third Jud. Dist. Ct., Utah, Jan. 9, 1969)

A 1969 ruling in the Third Judicial Court of Utah guaranteed the right to an education at public expense to all children in the state. This action was brought on behalf of two trainable mentally retarded children who were the responsibility of the State Department of Welfare. The children were not being provided with suitable education. The judge, in his opinion, stated that the framers of the Utah constitution believed "in a free and equal education for all children administered under the Department of Education." He further wrote that "the plaintiff children must be provided a free and equal education within the school districts of which they are residents, and the state agency which is solely responsible for providing the plaintiff children with a free and public education is the State Board of Education."

MARYLAND ASSOCIATION FOR RETARDED CHILDREN v. STATE OF MARYLAND, Civil No. 72-733-M (D.C. Md., filed July 19, 1972, Abatement Order Sept. 7, 1973) Replied in state court
MARYLAND ASSOCIATION FOR RETARDED CHILDREN v. STATE OF MARYLAND, Equity No. 100-182-77876 (Circuit Ct., Baltimore City, Md., filed May 3, 1974)

A class action suit was brought by the Maryland Association for Retarded Children and 14 mentally retarded children against the state of Maryland and its State Board of Education, State Superintendent of Education, Secretary of Health and Mental Hygiene, Director of the Mental Retardation Administration, and local boards of education for their failure to provide retarded or otherwise handicapped children with an equal and free public education.

The 14 plaintiff children range from those classified as severely retarded to the educable. The majority of the children, whether living at home or in an institution, are not receiving an appropriate education with some children being denied any education and others inappropriately placed in regular education programs. For example, two educable children, residing in Baltimore city, have been placed and retained in regular kindergarten programs because they are not yet eight years old though their need for a special class placement has been recognized.

The complaint emphasizes the importance of providing all persons with an education that will enable them to become good citizens, achieve to the full extent of their abilities, prepare for later training, and adjust normally to their environment. It is further argued that "the opportunity of an education, where the state has undertaken to provide it, is a right that must be made available to all on equal terms."

The contention of the plaintiffs is indicated in the following

"There are many thousands of retarded and otherwise handicapped school-age children (children under age 21) in the state of Maryland. Defendants deny many of these children (including each of the individual plaintiff children herein) free publicly-supported educational programs suited to their needs, and for transportation in connection therewith.

"More specifically, defendants deny such educational programs to many children who are retarded, particularly to those who are profoundly or severely retarded, or who are multiply disabled, or who are not ambulatory, toilet trained, verbal, or sufficiently well behaved; or who do not meet requirements as to age not imposed on either normal or handicapped children comparably situated. As a result of their exclusion from public education, the plaintiff children's class (including plaintiffs) must either: (a) remain at home without any educational programs; (b) attend nonpublic educational facilities partly or wholly paid for by their parents; (c) attend 'day care' programs that are not required to provide structured, organized, professionally run programs of education; or (d) seek placement in public or nonpublic residential facilities, partly or wholly paid for by their parents, which do not provide suitable educational programs for many of these children.

"Like children for whom defendants provide suitable publicly-supported educational programs, including other retarded and otherwise handicapped children, the plaintiff children's class can benefit from suitable educational programs. The defendants' failure to provide these children with publicly-supported educational programs suited to their needs is arbitrary, capricious, and invidiously discriminatory and serves no valid state interest. The denial of such programs violated the plaintiffs' rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States."

The plaintiffs allege that the state's tuition assistance program provides insufficient funds to educate these children and thus parents are forced to use their own resources. "Thus, defendants have conditioned the education of these children on their parents' ability to pay. That action is arbitrary, capricious, and invidiously discriminatory, serves no valid state interest, and violates the said plaintiffs' rights under the due process and equal protection clauses of the Fourteenth Amendment."

Another allegation is that the state when making placement decisions does not provide for notice and procedural due process.

The plaintiffs are seeking declaratory and injunctive relief to require the state to make free education available for all handicapped or retarded children, regardless of the nature and severity of their handicaps.

On June 1, 1973, oral arguments were heard on a large number of motions by the state and local defendants to dismiss the suit on various grounds. The court refused to dismiss the suit.

As a result of a pre-trial conference held August 10, 1973, the defendants agreed to provide educational opportunity for a number of named plaintiff children beginning in September, 1973. This agreement has the effect of a preliminary injunction and will require programming to be provided for these children pending the outcome of the full trial.

On September 7, 1973, the court "abstained" with respect to the right to education issues in the case, requiring the plaintiffs to obtain a state court determination of their right to an education under state law before proceeding further with this branch of the case in the federal court. On September 27, 1973, the plaintiffs filed a companion case in Maryland state court in accordance with the federal court's directions (*M.A.R.C. v. State of Maryland*, Circuit Court for Baltimore County (Equity), Docket 100, File 77676, Folio 182).

Simultaneously, the three-judge court stayed proceedings with respect to the due process claim long enough to permit the defendants to revise their hearing procedures. In December, 1973, the State Board of Education adopted a regulation prescribing new procedures for special education placement decisions, procedures which were designed to comply with due process. These new regulations resolved the hearing procedure component of the case.

The right to education issue was the subject of a three week trial in February, 1974. A decision was issued by the Circuit Court on April 9, 1974, and was subsequently modified on May 3 and May 31, 1974.

The court sustained virtually all the plaintiffs' claims. The decree stated that

1. Maryland law guarantees free education to all handicapped children in the State. Judge John E. Rhine rejected the state's contention that a 1973 special education law mandated services for all children by 1980 (Sec. 106A, Annotated Code of Md.) on the basis that free education laws existed before the adoption of the 1973 law and were not repealed or amended by that law.
2. The State had until December 1974 to adopt adequate standards for educational programs in day care centers and state institutions, and until September 1975 to secure compliance with those standards.
3. The practice of referring children to private facilities without providing funds to pay for those programs is illegal.
4. Private referrals are outlawed unless such facilities provide accredited educational programs and can admit the child to the program rather than placement on a waiting list.
5. Mental retardation is not a condition that justifies home teaching instead of classroom instruction.
6. Handicapped children must be provided transportation to and from day programs. Weekend transportation must be provided to the home from a residential facility for all handicapped children if this practice is followed in other state institutions such as the School for the Deaf or the School for the Blind.

On May 30, 1974, the state asked the court to allow it until September, 1975 to comply with the provisions in the decree requiring additional funding. The state estimated the cost of compliance at over \$66 million per year. The Governor committed the executive branch of the state government in open court to securing compliance. On that basis, the court allowed the state until September, 1975 to comply, reserving jurisdiction in order to be able to require the state to keep its promises if it fails to do so voluntarily.

The court retained jurisdiction specifically for the purpose of enforcing the provisions of the decree.

NORTH CAROLINA ASSOCIATION FOR RETARDED CHILDREN, INC. v. THE STATE OF NORTH CAROLINA, Civil Action No. 30501E D. N.C. filed May 19, 1972.

On May 19, 1972 a suit was introduced in the Raleigh Division of the Eastern District Court of North Carolina by the North Carolina Association for Retarded Children, Inc. and 13 mentally retarded children against the state of North Carolina, various state agencies and their department heads, a city school district, and a county school district for failure to provide free public education for all of the state's estimated 75,000 mentally retarded children.

The class action suit names 13 severely and moderately mentally retarded children as plaintiffs. The children's histories include never having been in public school, having been excluded from public school, having been delayed entrance into public school programs, or in some cases having received an education through private programs at their parents' expense. Plaintiff children who had been receiving a

public education were excluded because of alleged lack of facilities or failure of the children to meet certain behavioral criteria such as toilet training. In summary, the suit is being brought on behalf of "residents of North Carolina, six years of age and over, who are eligible for free public education but who have by the defendants (1) been excluded, or (2) been excused from attendance at public schools, or (3) had their admission postponed, and (4) otherwise have been refused free access to public education or training commensurate with their capabilities because they are retarded."

The defendants include the state, the state superintendent of Public Education, the Department of Public Education, the State Board of Education, the Department and the Secretary of the Department of Human Resources, the Commissioner and the State Board and the State Department of Mental Health, the Treasurer and the Department of the State Treasurer, the State Disbursing Officer, the Controller of the State Board of Education, and the Wake County board of county commissioners. The two school districts are named as typical of all the state's local city or county education agencies. The board of county commissioners is also named as representative of all of the state's county boards that "have the authority and duty to levy taxes for the support of the schools."

Plaintiffs' attorneys quote the North Carolina constitution which provides that "equal opportunities shall be provided for all students for free public school education." Further support for the legal obligations of the state to provide for the education of the mentally retarded comes from the following section of a 1967 North Carolina attorney's general opinion:

It is unconstitutional and invalid, therefore, to operate the public school system in a discriminatory manner as against the mentally retarded child and to allocate funds to the disadvantage of the mentally retarded child. Often a mentally retarded child develops fair skills and abilities and becomes a useful citizen of the state but in order to do this, the mentally retarded child must have his or her chance.

The complaint specifically alleges that the school exclusion laws (G.S. Sec. 115-165) deprive the plaintiffs of the equal protection of the law in violation of the Fourteenth Amendment of the U.S. Constitution in the following manner:

1. Discriminates between handicapped and nonhandicapped children by allowing a county or city superintendent of schools to decide that "A child cannot substantially profit from the instructions given in the public school as now constituted and which discriminates against the severely afflicted (mentally, emotionally or physically incapacitated children) in favor of those children who are not so afflicted in that these unfortunate children are deprived of any and all educational training whereas the children who do not fall in this classification or category obtain complete free public education."
2. "Arbitrarily and capriciously and for no adequate reason" denies mentally retarded children educational opportunities to become self-sufficient and contributing citizens as guaranteed by the North Carolina constitution and laws and further "subjects them to jeopardy of liberty and even of life."
3. Denial of the plaintiff children from attendance in public schools imposes the unfair criterion of family wealth as the determining factor of their receiving an education. In effect, children from poor families are unable to obtain private education as can children from financially able families.
4. Plaintiffs' parents, although paying taxes for the support of public schools, are unable to have their children admitted and thus in order to obtain an education for them must pay additional funds.

Other counts included in the complaint are as follows:

1. In the implementation of the school attendance law plaintiffs are denied procedural due process of law as guaranteed in the Fourteenth Amendment of the U.S. Constitution including provisions for notice, hearing, and cross examination.
2. The North Carolina statute requiring parents to send their children to school contains an exception which relieves parents of children "afflicted by mental, emotional, or physical incapacities so as to make it unlikely that such child could substantially profit by instruction given in the public schools" from this responsibility. Plaintiffs argue, however, that this statute which is "to forgive what otherwise would be violations of compulsory attendance requirements and to preserve to the parents the decision of whether the child shall attend school" is in fact used to "mandate non-attendance contrary to Parents' wishes and thus justify the exclusion of retarded children from the public schools "in violation of their constitutional rights."
3. The defendants have ignored the law that all children are eligible for public school enrollment at age six and have excluded retarded children until they are older.
4. In addition to preventing the enrollment of plaintiff children in public schools, the defendants also are alleged to exclude, excuse, and postpone admission to public schools and to provide education for children at state schools, hospitals, institutions, and other facilities for the mentally retarded.

The suit seeks the following remedies:

1. Declaration that all relevant statutes, policies, procedures, and practices are unconstitutional.
2. Permanently enjoin the defendants from the practices described as well as "giving differential treatment concerning attendance at school to any retarded child."
3. A permanent injunction requiring that the defendants operate educational programs for the retarded in schools, institutions, and hospitals, and, if necessary, at home with all costs being charged to the responsible public agency.
4. A permanent mandatory injunction directing the defendants to provide compensatory years of education to each retarded person who has been excluded, excused, or otherwise denied the right to attend school while of school age and further enjoin the defendants to give notice of the judgment herein to the parents or guardians of each such child.

5. Provision to the plaintiffs the cost of the suit including "reasonable counsel fees."

On July 31, 1972, an expanded complaint was filed naming in addition to the North Carolina Association for Retarded Children, 22 plaintiff children. The additional allegations regarding the state's failure to provide for their education: "... who have by the defendants (a) been denied the right of free homebound instruction; (7) been denied the right of tuition or costs reimbursement in private schools or institutions; or (8) been denied the right of free operated by the State of North Carolina."

A further distinction is the allegation that there are state statutes which operate to grant "aid to the mentally retarded children below the age of six years in non-profit private facilities for retarded children and excluding such aid to mentally retarded children above six years attending the same type of institutions."

It is further alleged that the defendants further "failed to provide for appropriate free education, training and habilitation of the plaintiffs in their homes after excluding the plaintiffs from free education and training in the public schools and thus condition the plaintiffs education in the homes upon the impermissible criteria of wealth, denying training, education, and habilitation to those children whose parents are poor."

In the expanded suit an additional count has been introduced that focuses on the state institutions for the mentally retarded. Specifically, it is alleged that the centers for the retarded are "warehouse institutions" which, because of their atmosphere of psychological and physical deprivation, the institutions are wholly incapable of furnishing habilitation to the mentally retarded and are conducive only to the deterioration and the debilitation of the resident. "It is also charged that the institutions are understaffed, overcrowded, unsafe and do not provide residents with "education, training, habilitation, and guidance so will enable them to develop their ability and maximum potential."

The plaintiffs are seeking in addition to the remedies originally sought the granting of a permanent injunction:

1. to prevent the defendants from denying the right of any retarded child of six years and older to free homebound instruction;
2. to prevent the defendants from denying the reimbursement of tuition and costs to the parents of retarded children in private schools or facilities;
3. to direct the defendants to establish publicly-supported training programs and centers for all mentally retarded children without discrimination;
4. to direct the defendants "to provide such education, training and habilitation outside the public schools of the district or in special institutions or by providing for teaching of the child in the home if it is not feasible to form a special class in any district or provide any retarded child with education in the public schools of the district"

In early 1974, a three-judge court was appointed to rule on the constitutionality of the case. Although no ruling has yet been issued, the case is proceeding in the discovery process. (See *Hamilton v. Riddle*)

HAMILTON v. RIDDLE, Civil Action No. 72-86 (W.D. N.C., filed May 5, 1972)

This case was filed on May 5, 1972, in the Charlotte Division of the Western District Court of North Carolina as a class action on behalf of all school age mentally retarded children in North Carolina. Defendants include the Superintendent of the Western Carolina Center, a state institution for the mentally retarded; the Secretary of the North Carolina Department of Human Resources; the State Superintendent of Public Instruction; and the chairman of the Gaston County board of education.

Crystal Rene Hamilton is an eight year old mentally retarded child who until November 1, 1971, when admitted to the Western Carolina Center, had received only nine hours of publicly-supported training. She was admitted to the Center "under the provision that she would be able to remain in said Center for a period of only six months, after which time it would be necessary for her to return to her home and be cared for by her parents, that she has been diagnosed as a mentally retarded child and needs a once-to-one ratio of care and treatment." The complaint alleges that the parents are unable to provide "this care and treatment," that the state does not have other facilities to provide the care, and the Center administrator has notified Crystal's parents to take her home.

The cause of action cited in the complaint is that the state, through its board and agencies, "has failed to provide equal educational facilities for the plaintiff and has denied her access to education and training. Thus it is alleged that the plaintiff has been denied equal protection of the law and equal education facilities as "guaranteed" by the United States Constitution and the constitution and statutes of North Carolina. The statutes "guarantee equal free educational opportunities for all children of the state between the ages of six and 21 years of age."

Also at issue is the classification scheme used by the state which "selects some students as eligible for education and some as not. Further, the complaint argues that the state's practice of making financial demands upon the parents of mentally retarded children for the care and treatment of their children is repugnant to the provision of the law and is denying equal protection to said children"

Arguing that Crystal Rene Hamilton and the members of her class have suffered and are now suffering irreparable injury, the plaintiffs are seeking the following relief:

1. A three-judge court be appointed to hear the case;
2. Enforcement of state statutes providing equal educational opportunities and declare null and void statutes that do otherwise;
3. An injunction be issued to prevent the Western Carolina Center from evicting Crystal Rene Hamilton;

4. That this action be joined with civil action No. 72-72.

5. Plaintiff costs and counsel fees.

Action in this case is still pending. Although the case was not merged with *North Carolina A.R.C. Inc. v. The State of North Carolina*, a three-judge court was appointed in that case (N.A.R.C.) in early 1974 to rule on the constitutionality of the claim. That claim is the same as that in *Hamilton v. Riddle*. The court has not yet ruled on the claim, but when it does the decision will be binding on both cases. If it is determined that the claim is constitutional, then this case will proceed.

HARRISON v. STATE OF MICHIGAN, 350 F. Supp. 848 (E.D. Mich. 1972)

On May 28, 1972, the Coalition for the Civil Rights of Handicapped Persons, a non-profit corporation formed to advance the rights of handicapped children, and 12 handicapped children filed suit in the Southern Division of the United States District Court for the Eastern District of Michigan against the state of Michigan, the Department of Education, the Department of Mental Health, the Detroit school board and officers, and the Wayne County Intermediate School District and its officers for their failure to provide a publicly-supported education for all handicapped children of Michigan.

The suit seeks class action status and divides the plaintiff children, all of whom are alleged to have mental, behavioral, physical or emotional handicaps, into the three distinct groups:

1. Children denied entrance or excluded from a publicly-supported education;
2. Children who are state wards residing in institutions receiving no education;
3. Children placed in special programs that are alleged not to meet their learning needs.

The plaintiff children present a full range of handicapping conditions including brain damage, mild, moderate, or severe mental retardation, autism, emotional disturbance, cerebral palsy, and hearing disorders. The complaint suggests that the children named represent a class of 30,000 to 40,000 who are handicapped three times over. They are first handicapped by their inherited or acquired mental, physical, behavioral, or emotional handicap; secondly "by arbitrary and capricious processes by which the defendants identify, label, and place them, and finally by their exclusion from access to all publicly-supported education."

The complaint argues that the right of these children to an education is based on Michigan law stating that "the Legislature shall maintain and support a system of free public elementary and secondary schools as defined by law." Further, Article VIII, Section 9 of the Michigan Constitution indicates that the state shall foster and support "institutions, programs, and services for the care, treatment, education, or rehabilitation of those inhabitants who are physically, mentally, or otherwise seriously handicapped."

Further, as in all of the right to education litigation, the role of education in preparing children to be productive adults and responsible citizens is emphasized and can be summarized by this quote: "No child can reasonably be expected to succeed in life if he is denied the opportunity of an education."

Of importance in this suit is that recognition is given in the complaint to a mandatory special education law effective July 1, 1972. However, since that law was not to have been fully implemented until the 1973-74 school year, the plaintiffs were being denied rights. In addition, it was pointed out that the mandatory act does not provide for compensatory education or the right to hearing and review as the educational status and/or classification of the children is altered.

The complaint sought the following relief:

1. That the acts and practices of the defendants to exclude plaintiff children and the class they represent from an adequate publicly-supported education is a violation of due process of law and equal protection under the Fourteenth Amendment of the U.S. Constitution.
2. That the defendants be enjoined in continuing acts and practices which prevent plaintiffs from a regular public school education without providing (a) adequate and immediate alternatives and (b) a constitutionally adequate hearing and review process.
3. That plaintiffs and all members of the class be provided with a publicly-supported education within 30 days of the entry of such an order.
4. That within 14 days of the order defendants present to the court a list which includes the name of each person presently excluded from a publicly supported education and the reason, date, and length of his expulsion, suspension, exclusion, or other type of denial.
5. That parents or legal guardian of each named person be informed within 48 hours of the submission of that report of the child's rights to a publicly-supported education and his proposed placement.
6. That within 20 days of the entry of the order all parents in Michigan be informed that all children, regardless of their handicap or alleged disability, have a right to an education and the procedures available to enroll these children in programs.
7. That constitutionally adequate hearings on behalf of a person appointed by the court be conducted for any member of the plaintiff class who is dissatisfied by the education placement.
8. That plaintiffs be provided with compensatory services to overcome the effects of wrongful past exclusion.
9. That within 30 days from the entry of the order a plan for hearing procedures regarding refusal of public school admission to any child, the reassignment of the child to a regular public school and the review of such decisions be submitted to the court.

10. That within 30 days from the entry of the order a plan for adequate hearing procedures regarding suspension or expulsion of any student from school be submitted to the court.

11. Grant other relief as necessary including payment of attorney fees.

On October 30, 1972, U.S. District Judge Charles W. Joiner issued a memorandum, opinion, and order dismissing the plaintiff's complaint. In his decision Judge Joiner recognized that prior to the passage of Public Act 198 in 1971 (a law requiring education for all children to take effect September, 1973) "... the state of Michigan was making little effort to educate children who are suffering from a variety of mental, behavioral, physical and emotional handicaps, many children were denied education." He further indicated that until Public Act 198, there existed serious questions as to "whether such persons were denied equal protection of the law." He then stated that "if that condition still existed this court would have no difficulty, or exercise the slightest hesitation, relying on the *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1267 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972), in denying the motions to dismiss." Finally the judge pointed out that the passage of the law renders the complaint moot.

In the process of rendering his opinion Judge Joiner made the following key points:

1. To provide education for some children while not providing it for others is a denial of equal protection.
2. The development of a comprehensive plan for the education of handicapped children "... is not the sort of problem which can be resolved by the issuance, no matter how well intended, of a judicial order."
3. "The lawsuit must be dismissed as the plaintiffs' denial of equal protection claim because the court finds that it could not possibly, no matter how much it might like to, do anything more to solve the equal protection problem before proposals already being implemented under the leadership of the Michigan legislature, Michigan Public Act 198, 1971."
4. Although the complaint argued that Public Act 198 does not require a due process hearing prior to an alteration in a child's educational status "... it would be premature to hold that the statute will be applied in an unconstitutional fashion ... the court must assume that the statute will be applied in a constitutional fashion, whether it be in reference to equal protection, or in reference to due process."
5. "The most that should be done at this stage is to indicate clearly that, although the matter is at this time premature because the process of implementation is proceeding in good fashion, and because there is no way which this court could proceed with implementation faster, if it should turn out either that the act is not fully and speedily implemented and funded or that procedures do not comply with due process, judicial remedies would then be available to the injured persons."
6. In considering whether to retain jurisdiction of the 12 individual plaintiffs, the court indicated that "their case, compelling as it is, is no more compelling than that of the thousands who are to be the beneficiaries of Public Act 198." The judge continued, "... the court must assume that the state will act constitutionally, rather than unconstitutionally ..."
7. The fact that the Legislature had acted to affirm the constitutional equal protection principle prior to the "cause" being presented to the court provides a situation where "... the executive department can face up to the problems of due process in implementing the act before the act is fully operative." Further, Judge Joiner says "had the same foresight and leadership on the part of other branches of government been evidenced in the school segregation problems, it is clear there would have been fewer controversies, less stress and probably quicker and more widespread results."

ASSOCIATION FOR MENTALLY ILL CHILDREN v. GREENBLATT, Civil Action No. 71-3074-J (D.C. Mass., filed Dec. 30, 1971)
BARNETT v. GOLDMAN, Civil Action No. 71-3074 (S.D. Mass., filed July, 1974)

This class action suit is being brought by emotionally disturbed children against officers of the Boston school system, all other educational officers in school districts throughout the state, and the Massachusetts State Departments of Education and Mental Health for the alleged "arbitrary and irrational manner in which emotionally disturbed children are denied the right to an education by being classified emotionally disturbed and excluded both from the public schools and an alternative education program."

Lori Barnett, an eight year old child classified as emotionally disturbed, has never been provided with a public education by the Commonwealth. The situation has persisted even though she has sought placement in both the Boston special education program and residential placement in a state-approved school.

The suit specifically charges that as of July, 1971, a minimum of 1,371 emotionally disturbed children, determined by the Commonwealth as eligible for participation in appropriate educational programs, were denied such services. Instead they were placed and retained on a waiting list "for a substantial period of time." Although some of the children were receiving home instruction, this is not considered to be an appropriate program.

Secondly, it is alleged that the plaintiff children are denied placement in an arbitrary and irrational manner, and no standards exist on state or local levels to guide placement decisions in either day or residential programs. It is argued that, in the absence of state standards, the placement of some students while denying placement to others similarly situated violates the plaintiffs' rights of due process and equal protection.

Another issue in this case concerns the allegation that the plaintiff children are denied access to appropriate educational programs without a hearing thus violating their rights to procedural due process.

Finally, it is charged that the failure to provide the plaintiff children with an education, solely because they are emotionally disturbed "... irrationally denies them a fundamental right to receive an education and to thereby participate meaningfully in a democratic society, in violation of the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution."

Declaratory judgment is sought to declare unconstitutional excluding or denying an emotionally disturbed child from an appropriate public education program for which he is eligible without a hearing. Also sought is a judgment of unconstitutionality regarding the denial of placement to eligible emotionally disturbed children in the absence of "... clear and definite ascertainable standards established for admission to that program;" the refusal of placement to eligible children in programs while similarly situated children are admitted to such programs; and the denial of education to a child solely because he is emotionally disturbed. Permanent injunction is also sought to prevent the defendants from violating plaintiffs' rights. Finally, an order is requested to require the defendants to prepare a plan detailing how the plaintiffs' rights will be fully protected and to appoint a master to monitor development and implementation of the plan.

Because of new state officials and the voluntary dismissal of the organizational plaintiff, the name of the case was changed to *Barnett v. Goldstein*. In July, 1974, the plaintiffs filed interrogatories on both the city and state defendants. On September 18, 1974, the court denied the defendants' long-standing motions to dismiss and received an oral report on the status of the present programs. The court also ordered the defendants to report to the court by January 1, 1975, concerning all steps taken to implement Chapter 766, the state's new special education law, as of December 1, 1974. The new law became effective in September, 1974.

PANTICH v. STATE OF WISCONSIN, Civil Action No. 72-C-461 (E.D. Wis., filed Aug. 14, 1972)

This suit is being brought against the state by Mindy Linda Panitch as representative of a class of children "who are multi-handicapped, educable children between the ages of four and 20 years, whom the state of Wisconsin through local school districts and the Department of Public Instruction is presently excluding from, and denying to, a program of education and/or training in the public schools or in equivalent educational facilities."

The issue in this action is a Wisconsin statute and policy enabling handicapped children to attend "a special school, class or center" outside the state. When this occurs and depending upon the population of the child's residence, either the county or school district is required to pay the tuition and transportation. The policy limits the enrollment of children under this act to "public institutions." The rationale is that "constitutional and statutory limitations preclude in-state handicapped pupils attending private educational facilities and receiving the benefits of tuition. This policy maintains a consistency of treatment for out-of-state school attendees as well. Experience with the program so date has indicated that the potential costs accruing to counties in utilizing both public and private facilities would be a prohibitive factor. Similarly, the department lacks sufficient staff, resources, and authority to assess the adequacy of private school facilities."

The complaint alleges that the plaintiff and members of the class are denied equal protection of the laws since the "defendant does not, either through local school districts or the Department of Public Instruction, provide any facility within the state to provide an education and/or training to plaintiff and other members of the class." This violation of the laws, it is alleged, occurs even though special education programs are available outside the state.

The relief sought includes:

1. the declaration that the statute and policy referred to above are unconstitutional and invalid;
2. direction from the court to the defendant to provide to the plaintiff and other members of the class "... a free elementary and high school education;" and
3. all plaintiff costs.

On November 18, 1972, Judge Myron L. Gordon of the Eastern District Court of Wisconsin issued a decision and order providing initially that this suit could proceed as a class action. The plaintiff class includes "... all handicapped educable children between the ages of four and 20 who are residents of Wisconsin and are presently being denied, allegedly, a program of education in public schools or in equivalent educational facilities at public expense." The defendant class also includes all school districts in the state. Finally, the court ordered the parties in the action to meet and devise plans for providing notice.

In December, 1972, the state and the named representative of the school districts filed answers to the complaint. At the same time, the school district, also filed a cross complaint.

In essence the state's answer to the complaint questions whether the claims made by the plaintiff are representative of the class and whether the named school district has denied or is continuing to deny public education to the plaintiff and whether the named school district is typical of all the school districts in the state. The state further denies that no facilities are provided within the state at public expense for the "education and/or training" of the plaintiff and other members of the class. It is admitted that appropriate facilities potentially available to the plaintiffs do exist outside the state but denied that all such facilities have been made unavailable to the plaintiff and the class at public expense. The state denies that the plaintiff and the class have been or are continued to be denied equal protection of the laws as required by the Fourteenth Amendment of the U.S. Constitution.

In presenting affirmative defenses, the state alleges that:

1. No justifiable controversy exists because "the complaint is a mere statement of unsupported legal conclusions."
2. The court should abstain "because a decision under state law might obviate the necessity of a federal constitutional determination."
3. The state has recognized the right of all handicapped children to be appropriately educated at public expense and has offered such opportunities to the plaintiff and members of the class.
4. The plaintiff is trainable, not educable, and will profit more from a training program than the academic program made available to all educably retarded and handicapped children.
5. A training program had been offered to the plaintiff's parents who would rather place the child in an out-of-state school for the visually handicapped at public expense.

6. The state does provide an equal opportunity for education and equal protection of the law to all children "... according to their physical and mental ability."

7. No grounds have been presented for temporary or permanent injunctive relief.

In conclusion, the state seeks a dismissal of the complaint.

The answer from the school district is essentially the same as for the state with the following exceptions.

1. No attempt was made to enroll the child in the district to educate the child.

2. Denies it is representative of all the state's school districts.

In the cross complaint against the defendants it is alleged that if the complaint is successful, that inequities will occur among the school districts in the financial responsibility for providing for the education of the plaintiff and the class.

The relief sought by the school district includes not only a dismissal of the complaint, but also a determination that if the complaint is successful, the statute regarding the financial responsibility for children placed in programs outside the state be declared unconstitutional as different burdens are assessed on the basis of the populations of the child's resident school district and/or county.

In December 1972 the plaintiff and her class amended their complaint to seek a three judge district court.

Additional arguments presented by the plaintiff state that the Wisconsin policy of providing education to nonhandicapped and some handicapped children while denying the opportunity for an education to other handicapped children forms two classes of children where constitutionally only one can exist. It was alleged that such exclusively practices violate the equal protection clause of the Fourteenth Amendment. Furthermore, the defendants have absolutely denied the plaintiffs an "opportunity to acquire the basic minimal skills necessary for meaningful exercise of the right of speech and the right to vote on an equal basis with other citizens of Wisconsin."

A second claim for relief was added alleging a lack of due process in state actions which placed, transferred, reassigned, excluded, exempted, suspended or expelled a child. Since important rights are at stake during these situations, stringent procedural due process requirements must be met.

Perhaps suggesting a new type of specific relief that will characterize future suits is that within 45 days of the court's order, a negotiated, "signed agreement between the parents or guardian of each handicapped child not being provided a free public education suited to his needs and the local school district, outlining a specific, individualized program of education to be provided for the child..." must be established.

On August 8, 1973, Chapter 89, Laws of 1973, a comprehensive new statute pertaining to the education of the handicapped became effective. After determination of the impact of the new law on the pending litigation, an amended complaint was prepared and filed on August 27, 1973. As is found in the original complaint, there are allegations about violations of equal protection of the laws in that the plaintiff still is "arbitrarily, capriciously, and for no adequate reason" being denied a free public education. It is alleged also that the new law contains language permitting the state to delay implementation of the "remedial sections" of the law. Other charges include violations of due process relating to the absence of "standards and guidelines" by which the state superintendent determines the eligibility of children to attend out of state public facilities or in state private facilities.

The defendants moved to dismiss this action on the basis that the complaint was moot due to passage of Chapter 89, and sought to have the court abstain from further proceedings pending implementation of the law.

Objection to the defendant's motion to dismiss the case was made by the plaintiff's father, who was named as a plaintiff in the amended complaint. He also added a claim for \$12,000 which he allegedly spend on the child's private program.

On February 19, 1974, a decision was issued by the District Court. On the question of the father's inclusion in the amended complaint, the court stated that his claim for damages based on past failure to provide public education for his child is more properly suited to a separate action. The court reserved judgement on the question of requiring the state to eventually reimburse those handicapped children to whom no public education is currently available for expenses incurred in attending private schools since the effective date of Chapter 89.

On the other issues in the case, the court ruled.

1. The plaintiffs motion for preliminary injunctive relief was denied. Because the state recognizes a child's right to an appropriate education and is seriously attempting to fulfill its obligations through Chapter 89, the court rules that judicial declarations of rights "hardly seemed necessary."

2. Despite the statutory provision allowing the state superintendent of Public Instruction to waive most requirements of the new law until July 1, 1976, the court ruled that judicial impetus was unwarranted since there was not evidence that the state was failing to proceed "with reasonable expedition."

3. The defendants' motion to dismiss the case was denied as the court held that "Creation of the statutes does not in and of itself moot this lawsuit. Only good faith implementation can." The court did not feel it should withdraw from the case until implementation is an established fact and consequently retained jurisdiction in the event that

(a) delays become inordinate.

(b) the waiver provision is used.

(c) the state court rules in such a way that a potential arises between what the state constitution allows and what the federal institution may require

Thus, as of this order, further proceedings in this case are stayed, subject to the following conditions

1. If inordinate delay in implementation of the law is shown, the plaintiff may reactivate the proceedings, but was not allowed to do so before June 1, 1974.

2. The defendants were to submit a report on implementation to the court by September 1, 1974.

On March 5, 1974, the court accepted the amended petition and stipulation of facts entered into between the attorneys for the parties. On March 19, 1974, the plaintiff petitioned the court to intervene as a petitioner in the action and on April 4 the motion was granted. The petition requested a declaration that Chapter 89 is valid and constitutional. The court affirmed its validity in August, 1974.

CASE *vs.* CALIFORNIA, Civil No. 101679 (Super. Ct. Riverside County, Cal., filed January 7, 1972); 4 Civil 13127 (Ct. of Appeals, Fourth District, California, filed July 16, 1974)

Lori Case is a school age child who has been definitively diagnosed as autistic and deaf and who may also be mentally retarded. After unsuccessfully attending a number of schools, both public and private, for children with a variety of handicaps, Lori was enrolled in the multi-handicapped unit of the California School for the Deaf at Riverside, California. Plaintiff attorneys maintain that this unit was created specifically to educate deaf children with one or more additional handicaps requiring special education. Lori began attending the school in May 1970, and is alleged to have made progress—a point which is disputed by the defendants. The plaintiffs argue that to exclude her from Riverside would cause regression and possibly nullify forever any future growth. As a result of a case conference called to discuss Lori's status and progress in school, it was decided to terminate her placement on the grounds that she was severely mentally retarded, incapable of making educational progress, required custodial and medical treatment, and intensive instruction that could not be provided by the school because of staffing and program limitations.

The plaintiffs sought an immediate temporary restraining order and a preliminary and permanent injunction restraining defendants from preventing, prohibiting, or in any manner interfering with Lori's education at Riverside. A temporary restraining order and a preliminary injunction were granted by the Superior Court of the State of California for the County of Riverside.

The arguments presented by the plaintiffs are those seen in other "right to education" cases. The question of the definition of education or educability is raised. The plaintiff attorneys state that "if by 'uneducable' defendants mean totally incapable of benefiting from any teaching or training program, then plaintiffs are in agreement, but defendants' own declaration demonstrates that Lori is not uneducable in this sense. However, if by 'educable' defendants mean 'capable of mastering the normal academic program offered by the public schools', then defendants are threatening to displace Lori on the basis of a patently unconstitutional standard. Application of such a narrow and exclusionary definition, in view of the extensive legislative provisions for programs for the mentally retarded, the physically handicapped, and the multi-handicapped would clearly violate both Lori's rights to due process and equal protection. The right to an education to which Lori is constitutionally entitled is the right to develop those potentials which she has."

Assuming existence of Lori's educability, the attorneys argue that "There is absolutely no distinction in law, or in logic, between a handicapped child and a physically normal child. Each is fully entitled to the equal protection and benefits of the laws of this State. Thus, to deprive Lori of her right to an education... would violate her fundamental rights."

The issue raised by the defendants regarding staffing and program limitations was answered by pointing out that the courts have ruled that the denial of educational opportunity solely on the basis of economic reasons is not justifiable. And finally the manner in which the disposition of Lori's enrollment at the school was determined was "unlawful, arbitrary and capricious and constituted a prejudicial abuse of discretion." It is pointed out that Lori's right to an education "... must be examined in a court of law, offering the entire panoply of due process protections ..."

The case was filed on January 7, 1972, and a temporary restraining order was granted the same day. A preliminary injunction was granted on January 28, 1972. Plaintiffs' first set of interrogatories was filed on March 10, 1972, and a trial date set for May 8, 1972. Trial was held on September 6, 1972.

On January 23, 1973, Judge E. Scott ruled that the defendants had acted legally in dismissing Lori Case from the California School for the Deaf. In addition he dissolved the earlier preliminary injunction which had required that Lori be retained in the school.

The court in reaching this decision indicated that since the California public schools were obligated to "educate children of suitable capacity," a status not achieved by Lori Case, there was no responsibility to provide her with an education. Judge Scott defined "suitable capacity" as the "ability of the child over several years of schooling to acquire at least basic vocabulary, reading, writing and mathematical skills commensurate with lower grammar school levels and the ability of the child to participate individually as a pupil and contributing to his classroom group." The court continued by saying that "teaching a child of school age with diminished mental capacity to eat, use toilet facilities, etc., dress, and avoid dangers in her immediate surroundings... is not educating such child within the meaning of the Education Code." Further, the court said that the obligation of the state to teach such skills to "autistic, mentally retarded or mentally ill children of limited and diminished mental capacity" is taken care of by state hospitals and institutions. Finally, the court also ruled that the procedural manner in which Lori was discharged from the school was fair and reasonable.

The plaintiffs appealed the decision and in December, 1973, a Reply Brief of Amicus Curiae was filed by The Council for Exceptional Children, the National Society for Autistic Children, the National Association for Mental Health and the National Center for Law and the Handicapped. The brief stated that Amici were not primarily concerned with whether or not Lori was to be retained at Riverside but rather that the state provide her with an appropriate program of free public education. Amici maintained that Lori had a right to

1. adequate alternative educational services suited to the child's needs.
2. an adequate prior hearing and periodic review regarding the child's status and progress, and the adequacy of any educational alternative.

A decision was reached on July 18, 1974, and in part supported the lower court's decision by ruling that Lori was too handicapped and too severe a behavior problems for placement at Riverside, and that none of her constitutional rights were violated when she was rejected from the school.

On the question of whether a child residing in California has a right to an appropriate education, however, the Appellate Court reversed the lower court decision and stated that it is indeed the responsibility of the state to provide adequate and equal educational opportunities for all children. However, "individual parents may not unreasonably demand one particular school." Thus Lori has a right to an appropriate, free education, but not at Riverside.

On the issue of a denial of due process, the Court answered that no hearing covering the removal of Lori from the unit occurred because the plaintiffs never requested such a hearing. The Court supported the Attorney General's decision that the failure to exhaust administrative remedies was the plaintiffs responsibility, not that of the defendants.

On July 31, 1974, the plaintiffs filed a petition for a rehearing, which was denied. On August 26, the plaintiffs filed a petition for hearing in the California Supreme Court.

Meanwhile the plaintiff Lori is attending a special education program in a public school and is reported to be making good progress.

BURSTEIN v. BOARD OF EDUCATION OF CONTRA COSTA COUNTY, Civil Action No. R-19266 (Super. Ct. Contra Costa County, Cal., filed December 30, 1970)

The plaintiff children are described as autistic for whom inappropriate or no public education programs have been provided. Thus, there are within this suit two sets of petitioners and two classes. The first class includes autistic children residing in Contra Costa County, California, who have sought enrollment in the public schools but were denied placement because no educational program was available. The second class of petitioners includes five children also residing in Contra Costa County and classified as autistic. These children have been enrolled in public special education classes but not programs specifically designed to meet the needs of autistic children.

The complaint alleges that no services were provided to any of the children named until the plaintiffs in October, 1970, informed the defendants that "they were in the process of instituting legal action to enforce their rights to a public education, pursuant to the laws of the state of California and the Constitution of the United States." The children named in the second class were placed in special education programs, but as indicated, not a program designed specifically to meet their needs.

It is argued in the brief that "education for children between the ages of six and 18 is not a mere privilege but is a legally enforceable right" under both the state laws of California and the United States. Further, it is pointed out that specialized programs to meet the needs of autistic children are required to enable these children to participate fully in all aspects of adult life. It is also indicated that autistic children are educable and that when they are provided with appropriate programs, they can become qualified for regular classroom placement.

Based on the allegation that the petitioners have been denied their rights to an education by the school board who, although knowing of their request for enrollment in programs, "wrongfully failed and refused and continued to fail and refuse . . ." enrollment, the petitioners request the court to command the school board "to provide special classes and take whatever other and further steps necessary to restore to petitioners the right to an education and an equal educational opportunity . . ."

The arguments presented by the attorneys for the petitioners justify on a variety of legal bases their rights to publicly-supported educational opportunities. In addition to citing the equal protection provisions of both the United States and California Constitutions, it is also pointed out that "denial of a basic education is to deny one access to the political processes. Full participation in the rights and duties of citizenship assumes and requires effective access to the political system . . ." Further, the attorneys argue that "one may be denied his economic rights through denial of an education." In addition, the petitioners are not only denied the same educational benefits as nonhandicapped children, but also are denied that which is provided to other school-age children suffering from mental or physical disabilities. Finally, the attorneys provide an argument that refuses the frequently used high cost rationale for the denial of special education programs. They say that "granting an education to some while denying it to others is blatant grounds that providing one with rights to which he is entitled but unlawfully denied will result in additional expense. If the respondent in this case is unable to receive funding for the required classes from the state, it is incumbent on it to reallocate its own budget so as to equalize the benefits received by all children entitled to an education."

This case was expected to go before the Superior Court of the State of California in and for the County of Contra Costa during winter, 1972. However, no action has been taken, and the case is still pending as the parties go through the discovery process.

TIDEWATER SOCIETY FOR AUTISTIC CHILDREN v. VIRGINIA, Civil Action No. 426-72-N (E.D. Va., December 26, 1972)

In August, 1972, suit was entered in the Norfolk Division of the U.S. District Court for the Eastern District of Virginia on behalf of the class of autistic children who plaintiffs argued against the state of Virginia and the State Board of Education for their alleged legal right to be provided with a free public program of education and training appropriate to each child's capacity.

The complaint is based upon the "basic premise" that "... the class of children which the plaintiff seeks to represent are entitled to an education and that they have a right under the United States Constitution to develop such skills and potentials which they, as a handicapped child, might have or possess. The plaintiff asserts that to deny an autistic child a right to an education is a basic denial of his fundamental rights."

It is also charged in the complaint that discrimination is being practiced against autistic children "since they are educable and no suitable program of training or education is available for them." It is also pointed out that the state has wrongfully failed to provide a program for these children on the basis that "there is not enough money available." The complaint also contains a history of the state's failure to establish pilot programs for approximately 22 children in the Tidewater Virginia area. After the request for funds from the state was reduced from \$100,000 to \$70,000, the state appropriated \$20,000 to serve seven children in the four to seven year age range. Finally, it is alleged that if the requested relief is not granted, there are teen-age members of class " . . . who will not have an opportunity to receive any training or education whatsoever."

Specifically, the relief sought includes

1. Granting of declaratory judgment that the practices alleged in the complaint violate the Fourteenth Amendment of the U.S. Constitution.
2. Immediate establishment of free and appropriate programs of education and training geared to each child's capacity.
3. "Determination that each and every child, regardless of his or her mental handicap, is entitled to the equal protection of the law and a right to an education in accordance with the child's capacity."
4. Awarding of court and attorney fees to the plaintiffs.

On the 7th of September, the Commonwealth of Virginia submitted to the Court a motion to dismiss the suit for the following reasons

1. "Plaintiff fails to state a claim upon which relief may be granted."
2. Suits may not be filed against the Commonwealth of Virginia.
3. The complaint should first be heard by a state rather than a federal court.

In December, 1972, the court issued a memorandum, opinion, and order that dismissed the plaintiffs' complaint. In making this judgment, Judge MacKenzie of the Eastern District of Virginia reasoned that although the importance of an equal education is widely recognized, there is nothing in the United States Constitution that " . . . addresses itself to any explicit or implicit guarantee of a right to a free public education." He further explained that because such a right is guaranteed by the Virginia Constitution and state laws, " . . . the obligation of that right should first be pursued through appropriate state remedies. Consequently, the court refused 'on the basis of comity and the doctrine of equitable abstention . . . the premature attempt to enforce this untested Virginia law.'"

The argument made by the plaintiffs was that even if the United States Constitution does not provide for the right to free public education, the equal protection clause does provide for equal treatment meaning that if education is provided for some autistic children, it must be provided for all. In responding to this argument, the court recognized the 1972 Virginia legislation calling for mandatory surveying and planning for the education of the handicapped as well as annually reporting progress and statutes that provide tuition for parents of autistic children to use to obtain private school placement for their children in the absence of public programs as a " . . . firm commitment by the state to live up to its equal protection obligation under the Fourteenth Amendment, as well as its own state constitution." In the decision, the court states the assumption that the above statutes would be applied " . . . in a constitutional fashion and at this time it would be premature to hold otherwise." Support for this position is taken from the decision in *Harrison v. Michigan*.

Finally, the court ruled that no violation of equal protection occurred when a selected group of autistic children was selected for a pilot program while other similarly situated children did not have access to the program because the state's action was rationally based and "free of invidious discrimination" and that further " . . . the equal protection clause does not require that a state choose between attacking every aspect of a problem at once or not attacking the problem at all."

UYEDA v. DEPARTMENT OF EDUCATION, Civil Action No. 102802 (Super. Ct. Riverside County, filed June 14, 1972)

In June, 1972, suit was initiated by the mother of Craig Uyeda, a profoundly deaf 10-year-old boy against the California School for the Deaf at Riverside, its superintendent, Dr. Richard Brill, and the associate state superintendent of special education for an alleged violation of the child's civil rights.

Craig, a profoundly deaf child described as being "exceptionally bright" had been placed in the Riverside program since September, 1967. In September 1971, Craig was transferred from the regular program at Riverside to the multi-handicapped unit because of behavior problems that were interfering with his academic progress. The defendants informed the parents in May, 1972, that because Craig was a danger to the staff and other children, his enrollment was to be terminated.

The essence of the plaintiff's complaint is that in the absence of a compelling need and overwhelming necessity, " . . . to deprive Craig of his right to an education, which defendants seek to do, would violate his fundamental rights." It is also argued that "there is absolutely no distinction, in law or in logic, between a handicapped child and physically normal child. Each is fully entitled to the equal protection and benefits of the laws of this state." Finally, it is pointed out that California state law is clear in providing for the education of children with severe handicaps in special programs and that "to then expect such children to perform as well as those children with less severe educational handicaps makes a mockery of the school's duty and constitutes a flagrant violation of the severely handicapped student's right to an education."

Although the relief ultimately being sought is a permanent injunction, the initial request for a temporary restraining order and a preliminary injunction is made on the grounds that expulsion of the child from his present school will result in injury and irreparable harm and possibly the loss of any academic progress made to date. Further, it is alleged that although the defendants indicate there is another appropriate program available in the state, the staff at that program feel that the child is too old. Further, the defendants' original recommendation for the child's placement in the Riverside multi-handicapped unit was based on the availability of the needed behavior

modification programs which do not exist at the other school. Finally, plaintiffs allege that Craig's behavioral problems which are the alleged reason for his dismissal are not unique to him and are seen in comparable degrees to other children in the multi-handicapped unit.

While Craig's parents signed a form acknowledging their responsibility to remove the child from school if notified by the superintendent, it is alleged that this consent is suspect for a variety of reasons including the absence of "... notions of due process or a prior hearing. . . ." Further, it is indicated that the defendants "... failed to specify in advance the basis upon which such determination was to be made, failed to afford an adequate hearing on Craig's termination, and failed to provide a fair record for review or any right of review at all." The plaintiff concludes that "defendants attempt to summarily terminate Craig's constitutional and statutory right to an education at defendant school by such a unilateral, coercive procedure is wrongful and is violative of the procedural guarantees owing to Craig and his parents under the due process provisions of the United States and California Constitutions."

In addition to seeking a temporary restraining order, a preliminary injunction and a permanent injunction preventing the defendants from interfering in Craig's education at Riverside, the plaintiff is also seeking the cost of the suit.

On June 14, 1972, the court ordered the defendants to show cause why a preliminary injunction should not be granted and in the interim restrained and enjoined the defendants from dismissing Craig from the school.

Subsequently, the plaintiff's motion for a preliminary injunction was denied by the trial court. Thereafter, Craig entered a school for the deaf in the Los Angeles City School District, and at last report was doing quite well. For that reason, counsel for the plaintiff have not proceeded in the litigation, although the case is still on file.

KIVELL v. NEMOITIN, Civil Action No. 143913 (Super. Ct. Fairfield County, Conn., filed July 18, 1972).

In a Memorandum of Decision issued by Superior court Judge Robert J. Testo on July 18, 1972, the mother of a 12-year-old Seth Kivell, "a perpetually handicapped child with learning disabilities" was awarded \$13,400 to pay for the out-of-state private education the child received for two years when it was held that the defendant Stamford, Connecticut Board of Education did not offer an appropriate special education program for him.

The suit was brought by the mother of Seth Kivell when the child was initially classified by a Stamford Public School diagnostic team as a child in need of special education. The same team recommended a program to the parents who, on the basis of an independent evaluation and recommendation by a consulting psychologist transferred Seth to an out-of-state private school. The parents pursued their alleged rights through a local board hearing, at which their appeal was denied, and a state board hearing. After a state investigation, the State Commissioner of Education agreed with the plaintiff that the program offered for that year would not have met the child's needs. The commissioner indicated that if the Stamford board reversed its decision and assumed the tuition costs, the state under existing statutes would reimburse the district. This course was rejected by the Stamford board. The commissioner then ordered the district to submit a plan for his approval for the provision of appropriate special education services. Such a plan was approved and the Parents were notified approximately two months after the start of the second school year for which the judgment applied.

Judge Testo wrote after reviewing the state's statutory obligation to handicapped children that "it is abundantly clear from the statutes that the regulation and supervision of special education is within the mandatory duty of the State Board of Education and that the local town board is its agent charged with the responsibility of carrying out the intent of the law which the minor needs and is entitled to."

An order was also issued "directing the Stamford Board of Education and Superintendent of Schools of said City to furnish the minor with the special education required by the statutes of this State. Compliance of this order shall mean the acceptance and approval by the State Board of Education of the program submitted by the local board of education."

It is worthy of note that the judge anticipated that on the basis of his decision a multitude of similar suits might be filed. Consequently he stated that "this court will frown upon any unilateral action by parents in sending their children to other facilities. If a program is timely filed by a local board of education and is accepted and approved by the State Board of Education, then it is the duty of the parents to accept said program. A refusal by the parents in such a situation will not entitle said child to any benefits from this court."

IN RE HELD, Docket Nos. H-2-71 and H-10-71 (Family Court, Westchester County, New York, November 29, 1971)

This case heard in Westchester County, New York Family Court concerned the failure of the Mt. Vernon Public Schools to adequately educate 11 year old Peter Held. These proceedings were initiated after Peter Held had been enrolled in the public schools for five years, three of which were in special education classes. During that time the child's reading level never exceeded that of an average first grade student. After the child was removed from the public school and placed in a private school, his reading level in one year increased about two grades and he "... became a class leader."

In his decision, Judge Dechenhausen "... noted with some concern, the lack of candor shown by the representative of the Mount Vernon city school district in not acknowledging the obvious weaknesses and failure of its own special education program to achieve any tangible result for this child over a five year period." In commenting about the progress made by the child in the private school, the judge said, "It seems that now, for the first time in his young life, he has a future." Further, the judge noted that "This court has the statutory duty to afford him an opportunity to achieve an education."

The court in its ruling issued November 29, 1971, noted that since the child "to develop his intellectual potential and succeed in the academic area" must be placed in a special education setting such as the private school and since, "it is usually preferable for a child to continue at the school where she is making satisfactory progress", (*Knewiff v. Board of Education*, 1968, 57 Misc 2d 458) ordered that the cost of Peter Held's private education be paid under the appropriate state statute provisions for such use of public monies. The cost of transporting the child to the private school was assumed by the local district.

It is important to note that a year earlier, the child's mother applied for funds under the same statute for the payment of this private tuition but the application was not approved. This occurred even though "The superintendent of the Mount Vernon public schools"

certified that the special facilities provided at the private school were not available in the child's home school district. Also of interest is that in June of 1971, an initial decision rendered on this matter required the state and the city of Mount Vernon, where the child resides, to each pay one half of the private school tuition. That decision was vacated and set aside because the city argued that the court lacked jurisdiction over the city because "no process was ever served upon it and it never appeared in any proceeding."

NORTH DAKOTA ASSOCIATION FOR RETARDED CHILDREN v. PETERSON, Civil Action No. 1196 (D. N.D., filed Nov. 28, 1972)

In late November, 1972, a class action right to education suit was introduced in the southwestern division of the North Dakota District Court on behalf of all retarded and handicapped children of school age residing in North Dakota. The plaintiffs include the North Dakota Association for Retarded Children and 13 children who represent all other children similarly situated. The defendants include the State Superintendent of Public Instruction, the State Board of Education, the State Director of Institutions, the Superintendent of the State School for the Mentally Retarded, and six local school districts in the state as representative districts.

The 13 named children, ranging in age from six to 19, possess levels of intellectual functioning from profound to moderate. In addition, some of the children possess physical handicaps and specific learning disabilities. It is alleged that in order to obtain an education, many of the children have to attend private programs paid for by parents or have to live in a foster home paid for by parents in a community where special education programming is available. In addition, some children, although being of school age, are presently receiving no education or are attending a private day care program or reside in the state school for the mentally retarded where no educational programs are provided.

The importance of an education to all children and in particular to the handicapped is pointed out in the complaint where it is also alleged that only about 27 percent of the 26,000 children in North Dakota needing special education services are enrolled in such programs. It is indicated that the remaining 73 percent are

1. "enrolled in private educational programs because no public school programs exists, usually at extra expense to the child's family;
2. "are attending public schools, but receiving no education designed to meet their needs and receiving social promotions while they sit in the classroom and until they discontinue their education or become old enough to be dismissed;
3. "are institutionalized at the Grafton State School where insufficient programs exist to meet their educational needs; or
4. "are at home, receiving no education whatsoever."

The specific alleged violations of the law are as follows:

1. The deprivation of the equal protection clause of the Fourteenth Amendment of the United States Constitution in that the state compulsory school attendance laws "... arbitrarily and capriciously discriminates between the child whose physical or mental condition is such as to render his attendance or participation in regular or special education programs inexpedient or impractical, and the child deemed to be of such physical and mental conditions as to render his attendance and participation in regular or special education programs expedient and practical." It is also alleged that children excluded from the public school and assigned to "the state school for the mentally retarded are not all offered an education." Further "the superintendent of any [state] institutions may excuse the child from such institution without any reason or hearing thereon, and upon such exclusion the child is without any educational opportunities in the state of North Dakota." Because the state school does not have sufficient capacity for all the children on its waiting list, some children are simply excused from admission by denying their request for admission.
2. The deprivation of plaintiffs' rights of "... due process of law in violation of the Fourteenth Amendment of the United States Constitution in that it arbitrarily and capriciously and for no adequate reason denies to retarded and handicapped children of school age the education and opportunity to become self-sufficient, contributing members to the State of North Dakota, guaranteed by the Constitution and laws of the State of North Dakota and subjects them to jeopardy of liberty and even of life."
3. The deprivation of plaintiffs' rights "... of equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States, in that, excluding plaintiffs from the public schools, it conditions their education to those children whose parents are poor and unable to provide for their children's education otherwise."
4. The deprivation of plaintiffs' rights of "... equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States, in that plaintiffs' parents are taxed for the support of a system of public education, nevertheless the children are denied the benefits thereof, and they must pay additional monies to secure an education for their children."
5. The deprivation of plaintiffs' rights "... of procedural due process of law in violation of the Fourteenth Amendment to the United States Constitution, in that there is no provision for notice or for hearing of any kind, let alone any impartial hearing, with right of cross-examination, prior to or after the exclusion."
6. The use by the defendants of the state compulsory attendance law to permit violations that provide to parents, the decision of whether their child will attend school and further "... to mandate non-attendance contrary to the parents' wishes."
7. The confusion by the defendants of the compulsory attendance requirements that exclude "... retarded children from school until the age of seven years and excluding retarded children after age 16, despite their parents' election to the contrary, and the clear statutory guarantee that every child may attend public schools between the ages of six and 21 years."
8. The denial of the plaintiffs' "... right to attend public school and to an education ... by excluding and excusing them from school, by postponing their admission to school, by terminating their attendance at 16 years, and by failing to provide education for ..." the children in residence at the state school for the mentally retarded. This allegation is also based on the equal protection provisions of the 14th Amendment.

9. It is also alleged that in many cases where handicapped children are admitted to school they still are deprived of a meaningful education and "that the failure of the defendants to provide a meaningful education suited to the educational needs of such retarded and handicapped children deprives such children of an education just as certainly as said children were physically excluded from public schools."

10. Finally, the allegation that the exclusion clause of the state compulsory attendance law is unconstitutional and "... provides no meaningful or recognizable standard of determining which children should be excused [excluded] from public schools and when used is a violation of the constitutions of North Dakota and the United States."

The relief the plaintiffs are seeking includes the following:

1. The convening of a three-judge court.
2. Declaration that selected statutes, related regulations and practices are unconstitutional and must not be enforced.
3. Enjoin the defendants from "denying admission to the public schools and an education to any retarded or handicapped child of school age."
4. Enjoin the defendants from "denying an educational opportunity to any child at the Grafton State School" [for the mentally retarded].
5. Enjoin the defendants from "otherwise giving differential treatment concerning attendance at school to any retarded or handicapped child."
6. Require the defendants "to provide, maintain, administer, supervise and operate classes and schools for the education of retarded and handicapped children throughout the state of North Dakota and specifically where hearing shows an inadequate number of classes or schools are provided for the education and training of such retarded or handicapped children." This also applies to the state's institutions.
7. Require the defendants to provide compensatory education to plaintiff children and their class who, while of school age, were not provided with a meaningful education suited to their needs.
8. Plaintiffs' costs for prosecuting the action.

Several motions to dismiss were filed by state and local school districts, all of which are still pending. A three judge panel was convened in the U.S. District Court. The Court ordered that all prospective plaintiffs in the case be notified, and allowed this to be done by publication in all 12 of the state's daily newspapers.

Subsequent to the filing of this suit, the North Dakota Legislature passed a mandatory special education law much along the lines desired by the lawsuit, on July 1, 1973. The law provided that all school districts have a special education plan by July 1, 1975, and that such plans be fully implemented by July 1, 1980.

The Attorney General was asked when a district must provide special education. He provided these guidelines in an informal opinion: "We believe the mandate for special education became effective July 1, 1973. However, the Legislature recognized that it would be a practical impossibility to have a fully implemented program by that time and that is the reason for the subsequent dates. Therefore, while a school district may not be able to provide a complete program of special education on July 1, 1973, neither do we believe the district can do nothing about providing a program for a child already identified as handicapped. The statute obviously requires the districts to begin to offer such a program now with an acceleration so that it will be fully implemented by July 1, 1980. If districts cannot offer a full program at this time, it does not excuse them from a bona fide effort to begin the program immediately." (Op. Att'y. Gen. Aug. 6, 1973).

In view of these developments, the thrust of the case has changed from that of demanding a right to an education to one of ensuring that the new law is implemented. Much depends upon the action of the legislative session beginning in January, 1975 since the Legislature must appropriate funds for the program. Attorneys for the plaintiffs have decided to withhold a decision to pursue the case on its merits until after the legislative session.

COLORADO ASSOCIATION FOR RETARDED CHILDREN v. STATE OF COLORADO, Civil Action No. C-4620 (D. Colo. filed Dec. 22, 1972).

In December, 1972, the Colorado Association for Retarded Children and 19 named mentally, physically, educationally, perceptually or speech handicapped children filed a class action suit against the state of Colorado, the Governor, the State Departments of Education and Institutions, the State Board of Education and 11 Colorado school districts. The substance of the action is the state's alleged failure to provide equal educational opportunities to 20,000 handicapped children. Specifically, the class includes all handicapped children who are eligible for free public education but who have been excluded or excused from attending or otherwise been refused free access to public education.

The named plaintiffs in this case include children with varying degrees of mental retardation, epilepsy, cerebral palsy, autism, learning disabilities with and without hyperactivity, and multiply handicapped children. The individual school histories reveal extensive use of a variety of private programs, including schools, therapies and tutoring as well as universities. Relations with the public schools include instances of oral denial of enrollment, exclusion after enrollment because of inappropriate or no program offering, parental withdrawal because of inappropriate placement and threats of future exclusion due to mobility problems.

Arguments supporting the right of handicapped children to an education are framed within the Colorado constitution which calls for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state for all children between six and 21, the Colorado compulsory school attendance law that provides that the education of children between six and 21 shall be free.

and makes school attendance compulsory for every child between seven and 15, and the equal protection clause of the Fourteenth Amendment of the U.S. Constitution.

It is also alleged that the defendants deprive plaintiffs of due process of law and also violate the Fourteenth Amendment of the U.S. Constitution "in that defendants have arbitrarily and capriciously and for no compelling or adequate reason denied to plaintiffs . . . the right to a publicly supported education, and the opportunity to become self-sufficient, contributing members of the community, and have subjected plaintiffs to jeopardy of liberty and even of life." It is also alleged that denial of the plaintiffs' education is conditioned "upon the impermissible criteria of wealth" and that although the parents of handicapped children pay taxes to support public education, their children are denied the benefits of such education.

The complaint also alleges that although Colorado statutes mandate district boards to provide educational programs for all school-age children they have "placed these children (plaintiffs) in an irrational, arbitrary, and unintelligible class and excluded them from association with other children of differing physical and intelligence levels and have denied these plaintiff children the opportunity to progress according to their ability, and have not provided these children with adequate and available programs. . . ." Another claim is raised regarding the statutory provision for preschool programs for physically handicapped children despite the contention that all handicapped children require special education earlier than age five. This provision is also alleged to deny some handicapped children due process and equal protection of the law.

The remedies sought by the plaintiffs include:

1. The empaneling of a three-judge court.
2. Declaration that the plaintiff children have been unconstitutionally denied their right to a public education suited to their needs, and that the related statutes, policies, regulations, and practices are invalid and unconstitutional.
3. End the practices in question and provide the plaintiffs and their class with a public education within 30 days of the order including appropriate identification and evaluation procedures.
4. Provision of constitutionally adequate due process procedures regarding identification, evaluation and placement of handicapped children.
5. An injunction ordering the state and its agencies including school districts to develop plans for the provision of appropriate education programs to the plaintiffs and their class and detailed due process procedures governing identification, evaluation and placement.

Since this case involved the constitutionality of state laws, the plaintiffs requested the convening of a three-judge district court. The claim for equal educational opportunity was based upon both the state and federal constitutions. In the spring, 1973 the defendants filed a motion to dismiss on the basis that no right to an education is protected by the U.S. Constitution after the United States Supreme Court holding in *Rodriguez v. San Antonio School District*.

Plaintiffs countered by distinguishing *Rodriguez* as follows:

1. The discrimination in *Rodriguez* was only relative since all those children received some program of education. In the present case, however, the handicapped plaintiffs experienced a total deprivation under the policies of defendants.
2. The handicapped possess special characteristics that warrant strict inspection of the exclusionary practices which were not present in *Rodriguez*. Therefore, the right to education should be protected here.
3. Since most recent data demonstrate that all children can benefit from education programs, the defendants can show no rational relationship between their state constitutional purpose to educate all resident children and their policy of excluding the handicapped.

The court, acknowledging these factual distinctions, denied the motion to dismiss in June, 1973. It was further held by the court that although classifications were created by exclusions, they were unwilling as yet to declare them "suspect." Such a determination was reserved pending factual developments expected to emerge at full trial.

Subsequent to the court order denying the motion to dismiss, the Colorado Legislature passed a mandatory special education law, H.B. 1164, called the "Handicapped Children's Education Act". The law calls for education for all children by July 1, 1975. As a result of this new action the plaintiffs filed an amended complaint in the fall of 1973.

The amended complaint referenced the allegations of the original, and additionally condemned the 1975 implementation date. The defendants in turn filed motions to dismiss on the basis that the amended complaint failed to state a cause of action on which relief could be granted, and charged that because of the new law the whole issue had become moot.

In June, 1974, a three-judge federal court issued a ruling on the case. The order denied the defendants' motions to dismiss, stating that: "In the light of the irregular and delayed implementation in the essential areas of education for handicapped children, we are of the view that this case is not moot. The mere enactment of legislation without actual implementation does not render substantial legal questions moot."

A pre-trial conference was held on August 2, 1974.

BONNELLY v. MINNESOTA, Civil Action No. 3-72-141 (D. Minn., filed May 2, 1973)

In this class action suit filed on May 2, 1973, two mentally retarded persons alleged that the defendants, including the state and the State Board of Education, have denied to them and their class free access to a public education. The central question of fact as presented in the complaint is "the capacity of all retarded citizens, whatever their attributed intelligence, to benefit from education. . . ."

Plaintiff Donnelly, age 18, represents the state of retarded persons five to 21 eligible for but denied a public education. This class is estimated at 3,000 persons. A second class of retarded persons, age 22 and over, is represented by plaintiff Bakken, age 28. This class is estimated to include 1,800 persons who were denied a public education because of their retardation. The two plaintiffs present histories of limited public education and some private education. Both are presently in public programs, one in a day activity center and the other in a rehabilitation center, neither of which, it is alleged, can provide the education program needed.

The complaint presents arguments for "Right to Education" in relation to Minnesota statutes and particularly the state responsibility to provide special instruction for handicapped children of school age (five to 21). Also indicated is that the Minnesota Legislature established a system of area vocational schools, a system of vocational rehabilitation services, work activity programs for the mentally retarded and mentally ill in institutions, and a system of junior colleges and state universities. The complaint notes that "these educational services are provided free, or at nominal tuition by the State of Minnesota, and without regard to age of the individual."

Plaintiffs indicate that "the availability of day activity and work activity provide a foundational, continual and necessary framework upon which most mentally retarded individuals can entangle self-development to their ultimate goal of achieving self-sufficiency." Yet it is alleged that in February of 1973, the Department of Education refused to continue funding work activity, "taking the position that work activity is not education, but rather is maintenance oriented, and also justifying its action on the non-availability of federal funds." Consequently, it is alleged that the only work activity programs available to the mentally retarded are in state institutions, private programs, or those provided from local funds in some school districts.

"Plaintiff Donnelly alleges that in order for him to receive an education he must enter a state hospital for the retarded. The complaint further alleges that this denial deprives him and his class "of equal protection of law in violation of the Fourteenth Amendment to the Constitution of the United States in that it arbitrarily and capriciously and with no rational basis discriminates between those school age persons not mentally retarded who are provided a meaningful education process and the mentally retarded who are provided day activity education only"

It is further alleged that due process of law is also violated in that the state "arbitrarily and capriciously and for no adequate reason denies to retarded children of school age the meaningful education and the opportunity to become self-sufficient, contributing members of the society which is guaranteed by the Constitution of the United States and State of Minnesota and subjects him to jeopardy of liberty and even of life."

Plaintiff Bakken alleges that the state "denied her the right to a work activity program and in fact have arbitrarily, capriciously and illegally refused to fund the educational program she was enrolled in and all other similar programs, except those available at mental institutions." The complaint further alleges that such denial is a violation of the Fourteenth Amendment in that it discriminates "between persons in mental institutions who have these educational opportunities available and those who are not institutionalized . . ." and "between adults who are provided a meaningful education by the state so that they can become useful productive members of society, and mentally retarded adults"

In addition to judgment requiring the state to provide these programs, the complaint requests the court to grant plaintiffs the cost of the action.

On May 23, 1973, the defendants' answer to the complaint featured three points:

1. Plaintiff Donnelly is a ward of the state and his natural mother lacks legal capacity for the suit.
2. Plaintiff Donnelly has not exhausted available administrative remedies.
3. Plaintiff Bakken has not utilized alternative state programs to achieve her goals.

4. Alleges that much of the content of the complaint is based on improperly pleaded conclusions of law including the statement that "the opportunity of education, where the state has undertaken to provide, is a right which must be made available to all on equitable terms."

5. Denies knowledge of much of the contents of the complaints regarding the mentally retarded and education.

The case was dismissed by the court in March, 1974. It ruled that the passage of the Minnesota mandatory special education law rendered the issue moot.

RAINEY v. WATKINS, Civil Action No. 77820-2 (Chancery Court of Shelby County, Tennessee, filed April 8, 1973)
RAINEY v. TENNESSEE DEPARTMENT OF EDUCATION, No. A-3100 (Chancery Ct. of Davidson County, Tennessee, filed July 29, 1974)

This is a petition for a writ of mandamus requiring the defendants to perform their legal responsibility. The named defendants include the Memphis City Board of Education, its Superintendent and Director of Special Education. The plaintiffs allege that the defendants have failed to implement certain provisions of Tennessee's Special Education Act of April, 1972 which provide for an incremental program for implementation of special education services including three phases: a census to locate handicapped children and a survey of services and facilities; training of professional and para-professional personnel; and the establishment of special education classes and services for all handicapped children.

Petitioners include nine children with a variety of handicaps who are presently in private schools awaiting the development of public school programs or transportation or are inappropriately placed in public schools due to a lack of appropriate programs. Additionally, two petitioners are taxpayers concerned with the lack of educational opportunities for handicapped children and who are participating in the suit as taxpayers who must bear a share of the "tax burden which results from public resistance to and institutional care of handicapped persons who did not receive an education."

Under the provisions of the Tennessee Special Education Act, the census and survey to identify handicapped children was to have been started by June 26, 1972. The training phase was to have been started by October 26, 1972, and conducted in accordance with the need for personnel as indicated by the census. The third phase, establishing facilities for all children was to have occurred by the beginning of the 1974-75 school year. The petitioners alleged that the defendants have not done the census, and since they were to relate training activities to the census, any training being done prior to completion of the census is not in compliance with the statute.

The two petitioners who are participating in the suit as taxpayers specifically contend that "there are thousands of persons who receive public assistance and/or institutional care due, partially at least, to the failure of the defendants to provide said persons with an education. These persons would be individuals who never acquired the necessary skills for employment because they were denied a public education. These petitioners concede that a substantial amount of their tax dollars will be needed to provide all handicapped children with an appropriate education program. However, they demand that there will be a long-term savings to taxpayers as more handicapped children receive an education and fewer handicapped children grow up to be financial wards of the state and local governments."

The court ordered an alternative writ of mandamus commanding the defendants to comply with the petition or show cause why it has not been done.

The defendants filed a motion for dismissal on May 8, 1973 based on three points. First, it was alleged that the duties and performance of the State Board of Education and the State Commissioner of Education are "so intimately and inextricably involved with the performance of the local school system of the functions involved in the petition for mandamus that these parties are indispensable parties to this cause of action and that the case at bar cannot proceed in their absence." This point is expressly made in relation to state funding and state approval of local plans. Second, the defendants contend that the Court lacks jurisdiction because the "administrative supervision and judicial review processes set forth have not been utilized by the petitioners." Third, defendants contend that as far as approval and funding has permitted, the census directed by the alternative writ of mandamus was in the process of being carried out. Defendants claimed that their action has been delayed subject to actions of the State Board of Education.

On May 11, 1973, petitioners filed a memorandum of law and facts in response to the defendants' motion to dismiss. In this memorandum the petitioners claimed that the motion to dismiss misconstrued the relief requested, ignored the laws of Tennessee regarding mandamus actions, quoted out of context phrases from the Tennessee Special Education Act, and failed to mention specific provisions of the Act which the petitioners contend are controlling in the issue.

The court held hearings on the motion to dismiss on May 25, 1973. The motion to dismiss was denied and the court gave the school board 30 days to file an answer which should include a report on the status of the census and other relevant data.

In December 1973, the Chancery Court of Davidson County issued a peremptory writ of mandamus, which ordered the defendants to commence preparation and distribution of certain portions of the state plan for special education, and which guaranteed equal education opportunities for plaintiffs by certain deadlines. As a result of further evidence produced through discovery depositions of certain defendants in January and February of 1974, both parties entered into an extensive Consent Agreement regarding implementation of Chapter 83B. The agreement was approved by the Chancery Court in Nashville on July 28, 1974, and notice of its provisions was then given to the class.

The Consent Agreement mandates appropriate and free special education services to all children between the ages of four and 21 who have a verified handicap (handicapped children already known) by September, 1974. By September, 1975, all handicapped children in the state who are not presently known are to be identified and provided such services.

If by September, 1976, a local school system is not providing appropriate special education services for all handicapped children within its responsibility, the State Department of Education is required to either withhold funds or directly provide appropriate services.

The agreement contains additional provisions with regard to due process procedures, compulsory attendance, updating of the statewide census, revision of the Comprehensive State Plan to be completed by December 1, 1974, clarification of conflicting state statutes, tuition grants, future certification requirements for all prospective elementary and secondary teachers, and notification to the class.

Members of the plaintiff class may file objections to the agreement prior to February 1, 1976. The court will retain jurisdiction, and the defendants must report to the court and the plaintiffs' attorneys certain information about each child not being provided appropriate services. These reports must be updated on October 1 and March 1 of each year. In order to protect the privacy of the children, reports are available for public inspection only upon terms decided by the court.

KEKANUNA v. BURNS, Civil Action No. 73-3788 (D. Hawaii, filed April 12, 1973). Replied in state court.
SILVA v. BOARD OF EDUCATION, Civil Action No. 41768 (1st Circuit Court, Hawaii, filed April 8, 1974)

In this class action suit against the state of Hawaii, it is alleged by the plaintiffs who represent all handicapped children that the state has deprived them of their right to an education by totally excluding some children, by shunting some children into inadequately funded private programs, and by disciplining some children and placing them in inadequate programs.

The school age plaintiffs include two emotionally disturbed children, one who attends a special class but is not provided with transportation and another who is presently not in school; two mentally retarded children who attend private schools, one at a cost of \$1,200 per year; a trainable mentally retarded child attending a private school; a 16-year-old learning disabled student who is presently receiving only a few hours of tutoring per week; and the Hawaii Association for Retarded Children. Specifically, the class which the named plaintiffs represent includes school age persons in Hawaii who, as a result of acts of the defendants, have been denied or excluded from a public school education, have received inadequate educational opportunities, have been erroneously classified as handicapped or retarded, and have been classified, assigned, transferred or disciplined by defendants without procedural due process.

The defendants include the Governor, Board of Education, Departments of Education, Health, and Social Services and Housing, and Accounting and General Services. In addition key administrators in each of these agencies are named.

Plaintiffs' counsel in establishing his argument cites Hawaii statutes and the Fourteenth Amendment of the U.S. Constitution as the basis for the provision of educational opportunities for all children. Other factual claims include the denial of procedural due process and equal protection with regard to classification and placement.

Other specific allegations charged in the complaint are that the defendants do not provide publicly-supported programs for all exceptional children below the age of four, fail to provide transportation to some handicapped children in need of same to receive an education, do not provide "effective" education programs at the state home for the mentally retarded and the state hospital for the mentally ill—both the responsibility of the Department of Health—did not develop and do not maintain an effective program of identification or assessment of handicapped children and did not develop or maintain adequate programs of vocational training or occupational therapy. It is also charged that as a result of the acts of the defendants, the plaintiff children and their class will "suffer continuing, irreparable harm to their future well-being as students, wage earners, citizens and members of society."

The relief sought by the plaintiffs includes:

1. Declaration that "defendants' practices and policies pertaining to the administration of public education programs are unconstitutional and do not comply with the due process or equal protection clauses of the 14th Amendment to the U.S. Constitution . . ." as they deny access to the public schools for any school age child, exclude children from regular public school placement, do not provide adequate due process and procedural safeguards in classification or placement of children.
2. Require defendants to provide lists of exceptional children who are presently suspended or excluded, presently enrolled or not now enrolled in a publicly supported program of education.
3. Require defendants to evaluate the correctness of children's placement and notify the parents or guardian of every child of the results of the evaluation.
4. Require defendants to evaluate the correctness of children's placement and notify the parents or guardian of every child of the results of the evaluation.
5. Require defendants to provide constitutionally adequate prior hearing and review procedures applicable to every student.
6. Require defendants to develop a plan for extending appropriate, publicly funded services to all children.
7. Require defendants to provide plaintiff children, and all members of the class they represent, with a proper placement and adequate program (within a reasonable time not to exceed 75 days).
8. Require defendants to provide plaintiff children with compensatory services to overcome the effects of any past misplacement or wrongful exclusion.
9. Require defendants to correct plaintiffs' school records with respect to erroneous entries.
10. Require defendants to review, at least semi-annually, the correctness of each child's placement.
11. Award to plaintiffs costs of this action.

A series of legal events have occurred since the case was originally filed:

1. May 14, 1973—defendants filed a Motion to Dismiss and a Motion to Strike, or alternatively, For a More Definite Statement.
2. June 7, 1973—Plaintiffs filed a motion for determination of class action.
3. August 30, 1973—Stipulation on certifying the class was filed.
4. August 22, 1973—Defendants filed a motion for the federal court to abstain from hearing the case.

On December 11, 1973, the District Court abstained from deciding the plaintiffs' claims. While retaining jurisdiction over the constitutional claims, the court ordered the plaintiffs to appear to the state court to obtain a definitive interpretation of H.R.S. 301-22, the state's special education law.

The court ruled that an authoritative analysis of that law, as yet uninterpreted by the Hawaii Courts, might provide a legal remedy for the plaintiff's claim. This would eliminate the need for any federal constitutional decision. The plaintiffs are now pursuing this course in the state court; the case is still in the discovery process. The case was removed after one of the original plaintiffs dropped out of the case.

FLORIDA ASSOCIATION FOR RETARDED CHILDREN, v. STATE BOARD OF EDUCATION. Civil Action No. 73-350—Civ. PP (S.D. Fla. filed Feb. 5, 1973)

The Florida Association for Retarded Children, the Duval County Association for Retarded Children and 12 school age persons possessing a variety of handicaps representing the class of all persons similarly situated have brought this right to education lawsuit against the governor and the State Board of Education, Commissioner of Education, Director of the Division of Elementary and Secondary Education, Chief of the Bureau of Curriculum and Instruction, Administrator of Education for Exceptional Children, Secretary of the Department of Health and Rehabilitative Services, Director of the Florida Division of Retardation, and the Duval County and Broward County Boards of Public Instruction.

The complaint seeks to establish one class for the plaintiffs containing three subclasses that may number 180,000 and a class for defendants as defined below:

Class I—"All exceptional children in the State of Florida who have been and will be totally excluded from an opportunity to receive a public education solely because of their physical, mental, emotional and/or specific learning disability."

Subclass A—"All exceptional children who have been and will be denied an opportunity to receive a public education before seven (7) years of age, solely because of their physical, mental, emotionally and/or specific learning disability."

Subclass B—"All exceptional children who have been and will be denied an opportunity to receive a public education upon reaching 18 years of age solely because of their physical, mental, emotional and/or specific learning disability."

Subclass C—"All persons who are under the care of the Department of Health and Rehabilitative Services who have been and will be totally excluded from an opportunity to receive a public education up to the age of 21 years, solely because of their physical, mental, emotional, and/or specific learning disability."

Class II—A class of 87 school boards that operate public schools in Florida. The Dade and Broward County School Boards are representative of this class.

It is alleged that the exclusion of the plaintiffs in the major class and subclasses is a violation of "the equal Protection clause of the Fourteenth Amendment to the Constitution of the United States by creating classifications which are arbitrary, irrational and devoid of any compelling state interest, depriving ~~plaintiffs~~ and members of their class of their fundamental right to an education."

Plaintiffs' attorney alleges that the statute defining exceptional children to include educable and trainable mentally retarded children creates two classes of mentally retarded children, those who are "educable and trainable" and those who are not, and that this classification deprives one of the plaintiffs and that class of their right to an education in violation of the Fourteenth Amendment.

A further allegation is that each of the plaintiffs was excluded from a public education without notice, hearings or an opportunity to be heard and that these policies and practices of the defendants deprive the plaintiffs and their class of procedural due process of law in violation of the Fourteenth Amendment.

Also alleged is that despite Florida statutes requiring the Department of Health and Rehabilitative Services to establish education programs for the clients it serves below age 21, the two plaintiffs residing in the Miami Sunland Training Center and their class have been denied an education in the facility and denied procedural due process relating to that decision.

Finally, the complaint alleges that the denial of equal education opportunity to the named plaintiffs by the defendants has harmed and damaged each of them and each member of their class in excess of \$10,000.

Relief sought includes:

1. Involving a three-judge court to declare unconstitutional and a violation of the Fourteenth Amendment, the state statutory exclusion from public education of children not "educable or trainable."
2. Declare the present policies and practices of the state regarding the exclusion of the plaintiffs and their class a violation of the 14th Amendment of the U.S. Constitution.
3. A halt to the continuation of the alleged exclusion practices.
4. Require defendant school districts to establish constitutionally adequate due process procedures regarding any possible infringement of plaintiffs' right to an education.
5. Require defendants to provide education to clients of the department of health and rehabilitative services
6. Award to each plaintiff and to each member of their class and respective subclasses an amount in excess of \$10,000.00 as compensatory damages resulting from defendants' failure to provide educational opportunities.
7. Award costs and reasonable attorneys' fees in favor of the plaintiffs

Upon filing, the defendants moved for dismissal. This was followed by plaintiffs' filing of an amended complaint that added that depriving individuals of an education contributed to the fundamental constitutional right of speech and the right to participate in elections on an equal basis with other citizens. The amended complaint also added that any classification imposed upon the plaintiffs because of their "unique disabilities" is suspect because of the manner in which society has and continues to treat the handicapped. Finally, the request for the court to award compensatory damages was deleted.

Defendants filed for dismissal a second time and plaintiffs filed a memorandum in response to this second motion to dismiss. These motions are presently under consideration by the court.

On July 1, 1973, new law was enacted in Florida which amended the Florida statutes to provide exceptional children with the right to a hearing. Because the creation of the hearing right changed the complexion of the suit, the federal court on September 30, 1973 abstained pending determination as to whether remedies for the original allegations are now available under state law. See *Wilcox v. Carter*.

WILCOX v. CARTER, Civil Action No. 73-41-CIV-J-T (M.D. Fla., filed January 7, 1973. Abstention order July 10, 1973)

This class action suit was brought against the Duval County, Florida School Board, the Superintendent of Schools, and the Director of the Exceptional Child Education Department for failure to provide free public education to the exceptional children residing in Duval County. The named plaintiff is a 10 year old mentally retarded child who represents a class "consisting of all persons, residents of Duval

County, Florida, aged five to 21 years, who are, have been or will be excluded from the public schools of Duval County on the grounds that they are exceptional children unsuited for enrollment in a regular class." The class of children includes, but is not limited to the mentally retarded, the speech impaired, the deaf and hard of hearing, the blind and partially sighted, the crippled and other health impaired, the emotionally disturbed, and those with specific learning disabilities.

After waiting a year for school admission and attending for three days, the plaintiff was requested to withdraw from a program for trainable mentally retarded children on the grounds that he was not toilet trained. In March 1972, approximately 2½ years later, application for admission was again made to the public school since the child had become toilet trained. In March, 1972, the child was placed on a waiting list "since no openings were presently available." It is charged that the public schools has provided no educational opportunities to the child since his exclusion in September, 1969.

The case was dismissed from the Federal Court on July 10, 1973, when the judge invoked the doctrine of abstention. The decision was based on statutes passed by the state subsequent to the filing of the case. The statutes provided for due process hearings prior to exclusion from the school system. The plaintiffs pursued this route but found no relief in the administrative hearing process because the statutes excluded "those who would not benefit from an education", meaning those with an IQ below 25.

However, in 1974 Florida adopted new definitions for educable and trainable mental retardation. The new statutes uses only the term "mentally retarded" and includes all degrees of disability. Funds have been appropriated specifically for the education of the severely and profoundly retarded for the school year 1974-75. Programs for these groups will be mandated beginning in 1977-78.

Because of the change in the law and the fact that the Duval County School system is now providing for these needs of the class of exceptional children represented in *Wilcox*, the suit has not been pursued in the state courts.

The basis of the suit is that the act of exclusion and the manner in which it was done violated the class and plaintiff's constitutional rights of due process and equal protection.

The relief sought included the following:

1. provide plaintiffs with a publicly-supported education within 30 days;
2. submit a list of exceptional children presently excluded within 14 days, and the reasons for the date of their exclusions;
3. notify the parents of such children and inform them of the child's proposed educational placement;
4. publicly announce to all parents within Duval County that all exceptional children have a right to an education;
5. hold constitutionally adequate hearings before a master or other appropriate person for members of the plaintiff class;
6. correct the school records of plaintiffs as to past wrongful exclusions;
7. submit within 30 days a plan for adequate hearing procedures to precede any change in a child's enrollment.

On January 31, 1973, the defendants tried a motion for abstention which was granted.

See also *Florida Association for Retarded Children v. State Board of Education*.

BRANDT v. NEVADA, Civil Action No. R-2779 (D. Nev., filed Dec. 22, 1972)

At the outset of the complaint in this case, it is stated that the purpose of the suit is to require "the state of Nevada to provide a free public education to all of its children, equally, without regard to the fact that certain of its children are physically or mentally handicapped."

Named in the suit as plaintiffs are eleven physically or mentally handicapped children ranging in age from five to 17. Seven presently reside at the Nevada State Hospital for the mentally retarded and four are at home with their parents. The plaintiffs are bringing suit on behalf of themselves and for "all other persons, residents of the State of Nevada, aged three to 21 years, who are eligible for a free public education" but who have been excluded from, denied access to, or have been delayed admission to public schools. The plaintiffs allege that 2,967 out of a possible 14,000 handicapped children of school age in the state are attending the public schools.

Defendants are the State of Nevada, State Board of Education, State Department of Education, State Superintendent of Public Instruction and Boards of Trustees of Nevada's school districts.

The complaint charges that plaintiffs and their class have been denied an educational opportunity equal to that provided to nonhandicapped children and to some handicapped children. Violations of the due process requirements of the Fourteenth Amendment are also charged because "the procedures by which plaintiffs are excluded or suspended from public school are arbitrary . . ." and fail to include many of the required elements of constitutionally adequate due process.

Relief sought includes:

1. Convening a three-judge court to declare the Nevada statutes, practices and policies permitting school districts to deny any or some handicapped children from a public education unconstitutional. Also sought is a declaration that statutes denying adequate due process in making decisions about the education of handicapped children is unconstitutional.
2. Specifically sought is a declaration that the following statute is unconstitutional: "when the number of physically handicapped or mentally retarded minors within a school district is so small, the distance to another public school where such instruction is offered is so great, or the services of a qualified teacher cannot be obtained," then the school district does not have to make special provisions for the education of the handicapped. It is unconstitutional on the grounds that elimination of the mandatory requirements for some children because of arbitrary conditions fails to provide equal protection.
3. Similar declaration is sought regarding the statute that a school district cannot be required to provide for the education of handicapped minors "in excess of the number determined to be 2% percent of the total pupil enrollment of the school district in which plaintiffs reside."
4. Require school districts where "an inadequate number of classes or schools are provided for the education of handicapped children, directly to provide, maintain, administer, supervise, and operate classes and schools for the education of handicapped children"
5. Require the defendants "to provide compensatory years of education to each person who has been excluded, excused or otherwise denied the right to attend school while of school age."
6. Award costs to the plaintiffs.

In a companion memorandum in support of the motion to convene a three-judge court submitted by the plaintiffs, emphasis was placed on the movement by states to be required to provide all children with a free public education. Further it was argued that the issue involved in the case is of sufficient magnitude to warrant the court to apply a "strict standard of review." Other reasons presented to obtain this view of the case by the court are that handicapped children constitute a "distinct and insular minority" and that defendants' actions produced a "suspect wealth classification."

Although changes in Nevada statutes were made in the 1973 legislative session to eliminate the 2% percent service limitation, a limit still exists. Meanwhile the case is pending.

DAVID P. v. STATE DEPARTMENT OF EDUCATION, Civil Action No. 658-826 (Super. Ct. San Francisco County, Cal., filed April 9, 1973)

This class action suit was filed on April 9, 1973 challenging that section of the California Education Code which limits the number of educationally handicapped students who may be enrolled in special education programs to 2% of the students enrolled in the school district. It is charged that this limitation is arbitrary and irrational and is a violation of equal protection as provided by the U.S. and California Constitutions. Educationally handicapped minors are defined as:

minors who, by reason of marked learning or behavior disorders, or both, cannot benefit from the regular education program, and who, as a result thereof, require the special education programs authorized by this Chapter. Such learning or behavior disorders shall be associated with a neurological handicap or emotional disturbance and shall not be attributable to mental retardation. (*The Educationally Handicapped Minors Act*, SS 6750.)

David P. and Michael P. are natural brothers, ages 12 and 11, respectively, who are both neurologically handicapped and possess neurological disabilities that impair their perceptual skills. David P. was formally certified by the school district as an educationally handicapped minor and was placed on a waiting list for admission to a special education class. It was alleged, however, that there was no realistic possibility of his being admitted to such a program during the 1972 or 1973 school years. Michael P. applied for admission to a special education program in August, 1972, but his application has not yet been acted upon. The named plaintiffs represent a class which consists of (a) all minors who have been certified for, but not admitted to, special education programs for the educationally handicapped, and (b) all minors who are eligible for certification to special education programs for the educationally handicapped but who have not been certified for admittance to such programs.

Defendants are the State Department of Education, State Board of Education, Superintendent of Public Instruction, Superintendent and Board of Education of South San Francisco Unified School District, and the Superintendent of Schools for San Mateo County.

Plaintiffs allege that the defendants are empowered under the law to grant authorization to school districts to exceed the 2% limitation but have refused to grant such authorization. The plaintiffs argue that no more than 500 students throughout the entire state have been admitted to special education classes under such waivers during the academic years 1971-73 and that there are 770 and 180 educationally handicapped children on waiting lists for admission to special education classes in the two named defendant local school districts. It is further alleged that the assignment of an educationally handicapped minor to a regular educational program where he is denied the opportunity to acquire needed skills for participation in the society constitutes, in fact, a denial of an education.

Denying these children access to an appropriate education suited to their needs is contrasted in the complaint by indication that similar children who are provided such programs "are able to learn and benefit from their educational experience."

The complaint presents the following five causes of action:

1. Violation of the rights of the plaintiffs and their class to an education.

2. Violation of equal protection between (a) the plaintiffs and their class and other educationally handicapped minors who are admitted to special education classes; (b) other handicapped children who are admitted to special education classes without regard to the percentage of students enrolled in such classes; and (c) children enrolled in regular education programs appropriate to their needs.

3. Violations of the "mandate of the California Education Code that the course of instruction be suitable for the particular needs of the individual students."

4. Violations of due process in that no hearing or appeal procedures exist regarding the exclusion of educationally handicapped children from the special program.

5. Failure to provide these special programs "invidiously discriminates against those indigent parents who are unable to afford the costs of tuition at private schools" for their educationally handicapped children.

Relief sought by the plaintiffs includes preliminary and permanent injunctions requiring the defendants to provide special education programs for the named plaintiffs and their class and to prevent defendants from excluding educationally handicapped children from special programs without notice and constitutionally adequate hearings and periodic review.

The defendants filed a motion to dismiss which was denied November 5, 1973. The case is presently in pre-trial discovery proceedings. Attorneys for the plaintiffs anticipated moving for a partial judgment on the 2% issue in late 1974.

RHODE ISLAND SOCIETY FOR AUTISTIC CHILDREN v. BOARD OF REGENTS FOR EDUCATION OF THE STATE OF RHODE ISLAND, Civil Action No. 1081 (D.R.I., filed Jan 22, 1973)

This class action suit has been brought on behalf of all "exceptional handicapped children" in Rhode Island, a class which plaintiffs allege may be as large as 14,000 children. Handicapped children are defined by Rhode Island statutes as children "either mentally retarded or physically or emotionally handicapped as such an extent that normal educational growth and development is prevented."

Included within the total class are three subclasses. Subclass A is defined as "all members of the class who are excluded from publicly supported education." Subclass B is defined as "all members of the class who are excluded from regular classes and who have been placed in publicly supported facilities or special classes." Subclass C is defined as "all members of the class who are in regular classrooms but are in need of special education or supplemental educational assistance."

Among the allegations presented by the plaintiffs are that the defendants fail to provide adequate and suitable public education and that there is failure to provide due process hearings when decisions are made about placing children in programs or excluding them from programs. In presenting these allegations, the plaintiffs argue that failure to provide these children with a public education will result in harm to their future lives as citizens and wage earners.

The issues of stigmatization and the self-fulfilling prophecy are discussed in relation to the due process allegation. In making these allegations the plaintiffs charge the defendants with violating provisions of the U.S. Constitution and Rhode Island statutes providing for equal protection and due process of the law.

The relief sought by the plaintiffs includes declaration of the right of all children to receive an adequate, suitable education including special education whenever it is needed. Additionally sought is an order specifying that no child shall be removed from placement in a regular education program without constitutionally adequate notice and due process hearings, that periodic evaluation of special education programs be conducted, that parents be reimbursed for costs of obtaining an education for their previously excluded children and that compensatory education be provided for children who were previously excluded or inappropriately placed in special or regular classes.

As of August, 1974, the case was in the discovery process. The attorneys for the plaintiffs were hoping for a trial date of January, 1975.

KENTUCKY ASSOCIATION FOR RETARDED CHILDREN v. KENTUCKY STATE BOARD OF EDUCATION, Civil Action No. 435 (E.D., Ky., filed Sept. 6, 1973)

On September 8, 1973, this class action right to education suit was filed against the Kentucky Board of Education, the State Superintendent, and the Fayette County Board of Education and its Superintendent by a coalition of organizations involved in advancing the interests of exceptional children in Kentucky. Included are the Kentucky Federation Council for Exceptional Children, Kentucky Association for Retarded Children, United Cerebral Palsy of Kentucky, Kentucky Parents of Children with Communication Disorders, Jefferson County Association for Children with Learning Disabilities, and the Greater Louisville Council for the Hearing Impaired.

The suit is being brought specifically on behalf of all "exceptional children" who meet the statutory definition to be so categorized and who have been (1) excluded from the public schools of the state of Kentucky; (2) excused from attendance at public schools of the state of Kentucky; (3) otherwise denied education or training suitable for their condition in the public schools of the state of Kentucky; (4) or otherwise denied education or training suitable for their condition by agencies or instrumentalities of the state of Kentucky, and consequently have been (a) denied a free publicly supported education suited to their needs . . . or (b) are enrolled in certain "programs" which do not provide education suited to the children's needs."

Nine school age children possessing mild, moderate and severe mental retardation, multiple handicaps, blindness, deafness, physical handicaps, speech defects and immaturity coupled with a lack of communicative skills are the named plaintiffs. The Fayette County Board of Education has been named in the suit as representative of the "approximately" 190 county and independent school districts in Kentucky.

The complaint in essence argues that free public education, where the state has undertaken to provide it, is a right that must be made available to all on equal terms. In the instant case, deprivation of this right to the plaintiff children is a violation of the equal protection clause of the Fourteenth Amendment of the Constitution. Specific issue is taken with Kentucky statutes that require local school boards to exempt from compulsory education children "whose physical or mental condition prevents or renders inadvisable attendance at school or application to study" and any child "who is deaf or blind to an extent that renders him incapable of receiving instruction in the regular elementary or secondary schools, but whose mental condition permits application to study." In the case of deaf or blind children who are in the latter category, the state superintendent "may cause such children to be enrolled at the Kentucky School for the Blind or the Kentucky School for the Deaf." It is charged however that those institutions are "extremely selective and refuse to accommodate all the children who wish to attend them" resulting in some of these children being totally denied a public education. The complaint also charges that the statutory mandatory planning requirement that "by July 1, 1974, all county and independent boards of education shall operate special educational programs to the extent required by, and pursuant to a plan which has been approved by the State Board of Education . . ." gives the State Board "complete discretion . . . to approve a plan which provided for no programs for any of the classes of children represented by the plaintiffs herein or which fails to provide for programs for all the classes of children represented by the plaintiffs herein."

Plaintiffs' attorney also charged in the complaint that the exclusion of exceptional children from public school is "arbitrary, capricious and irrational, and constitutes invidious discrimination." Further, it is argued that "there is no compelling state interest nor even any rational basis justifying the defendants' exclusion of the plaintiff children. In addition, any classification imposed upon the plaintiffs to subject them here even saddled with such disabilities, subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process" indicates that they constitute a suspect class.

Charges are raised also that in the process of excluding children from public school, little or no procedural due process is provided to the plaintiff children or their families.

Included in the relief sought is the following:

1. The court issue declaratory judgments that once Kentucky has undertaken to provide public education, it must be made available to all children "regardless of their physical, mental, or emotional condition" and that all school districts must provide programs for these children.
2. The court declare unconstitutional that law which classified some children as incapable of benefiting from education.
3. The court declare that provision of education to deaf or blind children in the state residential schools is not satisfactory.
4. The court declare that no child may be excluded from regular school programs on the basis of classification as "incapable of participating in the regular program" without providing to the child and his parents full hearing and timely and adequate review of his status.
5. The court issue a permanent injunction requiring the state and its district to develop plans to serve all plaintiff children and their class by September, 1974 as a condition to receive minimum or other state funds, to identify all children, and to establish a full hearing and timely review procedures for all children "considered by school officials to be incapable of participating in the regular program of instruction."
6. The court appoint a master.

The award to plaintiffs of court costs and attorney's fees.

On October 24, the state in its answer to the complaint offered nine defenses to plaintiffs' charges and requested the court to dismiss the suit. Among the defenses presented by the state are:

1. That the state does not have equal obligation "to provide a free public education to all children."
2. That the state is presently "endeavoring to obtain additional and improved educational services for exceptional children."
3. That "the 1974 General Assembly will enact legislation and appropriate funds which will have a direct bearing upon the claims asserted by plaintiffs in this action."
4. That "the complaint fails to state a claim upon which relief can be granted."

As of the date of publication (December 31, 1974), a signed consent order had not been achieved.

BRIEF HALDERMAN v. JOHN C. PITTENGER, Civil Action No. 74-2716 (E. D. Pa., filed October 18, 1974)

This is a class action brought by those children who suffer from "brain damage and learning disability" and who represent a larger class of children. The complaint. They are exceptional children who allege that because the school districts have certified that there is no appropriate education in their public schools, they require private school special education and who therefore qualify for the state's tuition reimbursement program established under Title 24, Sec. 13-1377 (Supp.) of the Pennsylvania Statutes Annotated.

The defendants are the State Department of Education and its Secretary John C. Pittenger, Ferman Mooley, Director of the Bureau of Compensatory and Special Education Services, William Ohrtman, Chief of the Division of Special Education, and three local school districts (Philadelphia, Pennsylvania, and Lower Merion) and their superintendents. The complaint recites the statutory responsibilities of the Department of Education towards exceptional children. According to the law, the state funds and operates systems of public education for all average and some "exceptional" children, between the ages of five and 21. However, certain districts do not operate appropriate programs.

In cases where districts suspect that an appropriate program for a particular child does not exist, it assigns a psychiatrist to examine the child. If the resulting recommendation is a private placement, the law provides for tuition assistance to approved private schools in specified

amounts for particular disabilities. Plaintiffs allege, however, that most private schools charge more for tuition than the maximum reimbursement grant amount allows. As a result, most parents in this situation must pay the difference.

The three named plaintiffs attend private schools and receive tuition assistance from the state, but are financially unable to meet the complete tuition demands.

The complaint charges that Pennsylvania's statutes and regulations violate the equal protection clause of the Fourteenth Amendment because the arbitrary and capricious maximum tuition reimbursement grant discriminates against children certified to attend private schools when all other children have the opportunity for a free public education. In addition to this wealth discrimination, a further allegation is that the statutes and regulations violate the due process clause of the Fourteenth Amendment because children whose parents are unable to supplement the tuition grant are deprived of any meaningful opportunity for appropriate education. Finally, the plaintiffs allege that the statutes and regulations violate the Rehabilitation Act of 1973 (87 Stat. 356), which forbids discrimination against any handicapped person in financial assistance. Such a violation is inconsistent with the Supremacy Clause, Article VI, of the United States Constitution.

The plaintiffs are asking that the court (1) declare that the statutes in question violate the equal protection and due process clauses of the Fourteenth Amendment; (2) enjoin the defendants from enforcing the statutes; and (3) order that full reimbursement be made for all plaintiffs insofar as they have been denied or withheld such reimbursement.

The case is pending.

THE CUYAHOGA COUNTY ASSOCIATION FOR RETARDED CHILDREN AND ADULTS v. MARTIN ESSEX. Civil Action No. C74-567 (N.D. Ohio, filed June 28, 1974)

This class action suit was brought by the Cuyahoga County Association for Retarded Children and Adults (CAR) on behalf of six named mentally retarded children. The children, aged six to 18, represent what CAR claims to be 80,000 similarly situated children in Ohio. It is alleged that the named plaintiffs, whose diagnosed retardation ranges from profound to mild, have been denied proper educational opportunities, and as a consequence are suing the state for its failure to protect their rights as defined in state laws and regulations and under the U.S. Constitution.

The complaint rests on Section 3321.01 of the Ohio Revised Code, which provides that all children between the ages of six and 18 have the right to a publicly sponsored system of mandatory and compulsory education. The complaint charges that because of the way that the defendants have implemented the law, the plaintiffs have been either excluded from the system because of their handicap, or afforded only a substandard, voluntarily provided educational opportunity. Specifically, the plaintiffs allege that children with I.Q.'s of 80 or under are excluded from the system and relegated to voluntary programs and that children with I.Q.'s between 80 and 90 may be eliminated from the system since they are not identified for placement in the "normal" educational program, or participation in the voluntary program.

The suit further charges that the exclusions are done without adequate due process including proper notice and hearing, or proper periodic review, either as to reclassification or continued exclusion.

The defendants are Martin Essex, Superintendent of Public Instruction, the Department of Mental Health and Mental Retardation and its Director, Kenneth Gaver, and the State Board of Education and its members.

The plaintiffs are seeking the following:

1. The convening of a three-judge federal court.

2. A declaration that the disputed Ohio statutes and policies are unconstitutional and violate the due process and equal protection clauses of the Fourteenth Amendment because they allow the defendants to deny the plaintiffs an education while providing it to "normal" children, and they allow defendants to exclude the plaintiffs from the system without a hearing or review.

3. An order that the defendants be required to, within a reasonable period: (a) locate all retarded children in Ohio who are out of school; (b) submit a list of all children who have been excluded from school; (c) submit to the court a state plan for educating all retarded children, including due process provisions; (d) notify parents of their child's rights; and (e) within a time specified by the court, fully implement these plans.

The action is pending.

CALIFORNIA ASSOCIATION FOR THE RETARDED v. CALIFORNIA STATE BOARD OF EDUCATION. Civil Action No. 237327 (Superior Court, Sacramento County, California filed July 27, 1973)

This is a class action suit brought by the California Association for the Retarded, the Exceptional Children's Foundation, and nine retarded or otherwise handicapped children. The plaintiff children are seeking for themselves and for the class they represent injunctive and declaratory relief for what they charge has been a denial of access to a free public education.

The nine children, ranging in age from nine to 17, include a variety of handicapping conditions in isolation or in various combinations. All share a history of being denied access to a free public education for substantial periods of time, and all are presently excluded from public programs. Some are enrolled in private programs paid for wholly or in part by their parents, allegedly because there are no programs available to them in public schools.

The suit maintains that all of the plaintiff children are capable of benefitting from a free public education. All have made progress when attending private programs. One plaintiff, an 18 year old retarded and epileptic woman, for example, was termed "totally hopeless" when first admitted to a private school in 1961. A 1969 school report indicated that she "talks fairly well, . . . understands others quite well, feeds herself, is alert and responsive, . . . that she can be toilet trained and could be taught preschool skills."

The defendants include the California State Board of Education and its members, Superintendent Wilson Riles, and several county boards of education and their superintendents and members.

The questions of law at issue are: (a) whether some handicapped children can be denied access to a free public education when ordinary children and all other handicapped children are provided access to such education; and (b) whether the defendants' procedures in admitting

and assigning plaintiffs satisfy the requirements of the statutes and Constitution of California and of the due process clause of the Fourteenth Amendment.

The suit alleges that the opportunity of education, where the state has undertaken to provide it (in California Article IX, Sec. 1 of the State Constitution), is a right which must be made available to all on equal terms. Without it, children are denied the foundation of good citizenship, cultural experience, and future economic and social success in our society. The suit also contends that every handicapped child is capable of benefitting from an education.

Despite the fact that the state Education Code calls for free education for all, the suit contends that 83,915 children between seven and 15 are not being served in any program in California. They are excluded by being placed on waiting lists for Development Centers for the Handicapped when they live in areas where no Centers exist, and by inaction on applications for admission to existing Centers.

The defendants contend that they are not unlawfully denying plaintiffs access to an education. The plaintiffs ask for a judicial determination of their rights and duties, and a declaration as to whether the conduct of the defendants is unlawful.

The case is still pending.

STRICKLAND v. DEERFIELD PUBLIC SCHOOL DISTRICT NO. 189, (No. 73 L 284, Circuit Court, Lake County Illinois, filed 1974)

The plaintiff is a 13 year old child who attended the Warden Public Elementary School from January, 1968, through June 1972. She charges the school district with negligence in its failure to provide her with suitable education services. The defendant is a public school district in Lake County, Illinois, having control of the Warden School.

Before enrolling at Warden School, the plaintiff attended a private school where her teachers and parents note that she had great difficulty with academic work. After consultation with education experts, her parents transferred her to Warden School because the experts considered the public schools in the district to be well equipped to deal with learning problems. The defendant knew of the child's past difficulties and the justification for her transfer to Warden School, and undertook to provide her with an appropriate educational program.

The special education services subsequently made available to the child consisted of one semester of individual tutoring. It is alleged that after beginning the third grade, the school discontinued the tutoring and provided no further special services. Her parents discovered in September, 1972, that the child has been, and continues to be, perpetually handicapped. Illinois law provides for special education for children with such a learning disorder.

The suit argues that professionals employed by the school system were qualified and should have properly diagnosed and treated the handicap, and that the employees failed to exercise the customary skill in the practice of their professions, and failed to exercise due and reasonable care, causing injuries to the plaintiff.

Specifically, it is charged that the professionals:

1. Failed to give appropriate tests or make evaluations which would have revealed the child's learning disorders.
2. Failed to correctly identify the learning disorders.
3. Failed to provide the special education services necessary, even though they knew, or should have known, of the disorder.

In order to compensate for the harm caused by the school's negligence, the parents have paid for special services in a private school since September, 1972. The suit is asking for \$100,000 in damages, the cost of private education, and the cost of the suit.

RADLEY v. MISSOURI, Civil Action No. 73 C 586 (3), (E.D. Mo., Nov. 1, 1973)

This class action was filed in the U.S. District Court, Eastern District of Missouri, on November 1, 1973. At issue was the plaintiffs' contention that they had been denied access to instruction in free public schools because they were handicapped, a violation of the equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution and corresponding provisions of the Missouri Constitution.

The ten named plaintiffs have a variety of handicaps and claim that there are at least 35,000 others situated in Missouri who are completely excluded from public school. Children are denied services by: (a) being excluded; (b) being excused from attendance; (c) having their admission postponed; and (d) otherwise being refused free access to school, all on the basis of state laws and regulations.

The defendants are the State of Missouri, the Attorney General, members of the State Board of Education, several state departments related to mental health and their personnel, and several named school districts, their administrators and board members.

The plaintiffs alleged that they were denied an education because of the way school officials interpret statutes and the way in which they apply the rules and regulations. The plaintiffs also charge that they were deprived of equal protection in that:

1. The statutes arbitrarily discriminate between "mentally and physically incapacitated" children and others by excluding the former from regular day school.
2. The statutes discriminate against educable mentally retarded and crippled children who live in school districts without special classes, by excluding them from compulsory attendance.
3. The statutes discriminate between "mentally or physically incapacitated" children who are educable mentally retarded or crippled and those who are not by excluding the latter from compulsory attendance.

Further, the plaintiffs were denied procedural due process in that there is no provision for: (a) notice of a hearing; (b) a hearing of any kind; or (c) an impartial hearing with a right to cross examination either before or after the child's handicap is diagnosed.

On August 1, 1973, House Bill No. 474 was signed into law, making education for all handicapped children in the state mandatory by July 1, 1974. The suit charged that despite the Legislature's good intention, the period of time from the signing of the bill until its implementation was a continued period of violation of equal protection. In addition, there was no assurance that the bill would be implemented because no appropriation had been made.

The suit sought:

1. a declaration that the existing statutes and the new, if it provided for continued denial of services until July 1, 1974, be declared unconstitutional;
2. to enjoin the defendants from enforcing the law;
3. to enjoin the defendants to operate special classes in each school district and each state school and hospital if the existing number of programs was inadequate; and
4. to enjoin the defendants to provide compensatory education and award money damages.

On February 19, 1974, a three-judge panel dismissed the case on the basis that H.B. 474 made the issue moot. Basing its decision on the reasoning in the *Harrison v. Michigan* case, the court said it could see no way that it could speed the implementation process or provide a more comprehensive approach to the problem.

The panel did not deal with the issue of damages but instead sent that part of the case back to a district judge.

GRACE AND SCAVELLA v. DADE COUNTY BOARD OF PUBLIC INSTRUCTION (Circuit Court of Dade County, Florida, November 26, 1973)

The plaintiffs are two exceptional students who, because of the failure of the public schools to provide them with appropriate special instruction, attend private schools. One is speech impaired and suffers other health impairments, and the other is emotionally disturbed, socially maladjusted, and deaf and hard of hearing. The plaintiffs represent a class of students who are not provided special instruction within the Dade County School System, or through contractual arrangements with approved non-public schools or community facilities. The defendant is the Dade County Board of Public Instruction. Petitions for Writ of Mandamus and Rules to Show Cause were filed in the Circuit Court.

Florida law requires that the school board shall "provide an appropriate program of special instruction and services for exceptional students," and shall provide the special services either within the school system, in cooperation with other systems, or through contract with approved non-public facilities. The plaintiffs charge that the School Board failed to serve their needs in the public schools, and failed to pay for their education in a private facility. Plaintiffs charge that the refusal to comply with the mandatory provisions of the law is a clear violation of the positive duties created by the statute.

The suit is in the process of being settled by counsel.

JANET FLETCHER v. BOARD OF EDUCATION OF THE PORTAGE PUBLIC SCHOOLS, Civil Action No. A 741 00 AW (Circuit Court for the County of Kalamazoo, filed March, 1974)

The suit was brought by the mother of a 16 year old mentally and physically handicapped boy who has cerebral palsy and vision problems. The family resides in Van Buren County, Michigan, and are taxpayers in Kalamazoo County and the Kalamazoo Valley Intermediate School District.

The defendants are the Board of Education of the Portage Public Schools, the Superintendent of Schools, the Director of the Southern Special Education Service Area, the Board of Education of Kalamazoo Valley Intermediate School District, its Superintendent and Director of Special Education.

On October 3, 1969, the Kalamazoo County Probate Court committed the boy to the Coldwater State Home and Training School because he was judged to be mentally handicapped and suited to treatment in a state institution. On December 14, 1973, the boy was placed in a foster home in Portage, Michigan, Kalamazoo County. The home is within the boundaries of the Portage School District and of the Kalamazoo Valley Intermediate School District. The decision to place the boy in the foster home was made by a Placement Committee, which determined that he no longer needed institutional care and could benefit from community living and a public school special education program.

On December 13, 1973, the Portage School District held an Educational Planning and Placement Committee meeting to determine the boy's educational needs and plan an appropriate school placement. A decision was made to place him in the program for trainable children at the Kennedy School, with participation in a diagnostic program known as "REACH".

On December 19, 1973, the plaintiff was informed by letter that the local special Education Advisory Committee had acted to "delay" all special education services for persons returning from institutions to the community whose parents did not live in the Kalamazoo Valley Intermediate School District. After requesting a hearing, she was informed that one would not be granted since her son was not a resident of the Portage School District. On March 7, 1974, the Superintendent of the Portage Public Schools was directed, by letter, to place the student in the Kennedy and "REACH" programs, a directive that was refused. The suit charges that unless Placement occurs immediately in an appropriate program, irreparable harm will be suffered.

Relief sought from the court is as follows:

1. That the court issue a temporary restraining order requiring the defendants to immediately place the student in the program that was recommended by the Educational Planning and Placement Committee, pending a hearing and decision on the merits in the case and an

order to show cause why the plaintiff should not be granted a writ of mandamus.

2. Alternatively, to issue an order to show cause why the plaintiff should not be granted a writ of mandamus for the relief requested.

3. Find that the student is a resident of the Portage School District, that he be granted relief and that his educational status and placement be continually reviewed and evaluated, in accordance with the law.

On March 14, 1974, the Circuit Court of Kalamazoo County ordered that the boards of education of both school districts and the individually named defendants refrain from denying the boy placement in the programs that were determined to be appropriate for him, namely the Kennedy School Program and "REACH", pending a hearing on the merits of the case.

MARCOMBE v. THE DEPARTMENT OF EDUCATION OF THE STATE OF LOUISIANA, Federal No. 73-102 (M.D. La., filed 1974)

This is a class action suit brought by seven school age mentally retarded children who have been excluded from, or denied access to a free public education in Ascension Parish, Louisiana. They represent the class of all other children similarly situated in Ascension Parish, estimated to be 700.

The plaintiffs range in age from six to 19 and all have been diagnosed as retarded by state diagnostic centers. Certain public educational programs were recommended for each of the plaintiffs, but the appropriate placements were never made and the plaintiffs were either excluded from school, placed on waiting lists, or placed in a day care center.

The suit charges that the plaintiffs are being denied the equal educational opportunity given to other children in publicly supported schools. After being excluded from the system, the plaintiffs were either denied placement or required to attend classes in a day care center. The center is partially supported by the State Social and Health Rehabilitation Services Administration, but is dependant upon parental fund raising activities or contributions for 50% of its support. In addition, the center is alleged to be sub-standard and has no special facilities for the handicapped, in contrast to the services provided generally by the Ascension Parish School Board System.

The suit further charges that the manner in which plaintiffs are excluded or suspended from public school violates the due process requirements of the Fifth Amendment of the U.S. Constitution, as well as state statutes. Although Louisiana Revised Statutes 17:1943 states that children aged three to 21 have the right to a free public education, the "Plan for Implementation of Act 487, 1964, Regular Session of the Legislature" discriminates against the plaintiffs because it establishes two different classifications for the mentally retarded.

(1.) Children with I.Q.'s between 50 and 75, classified as "Educable Mentally Retarded". Such children, according to the Plan, must be six before they can attend school.

(2.) Children with I.Q.'s between 40 and 50, the "Trainable Mentally Retarded," eligible for public education only if between the ages of seven and 18. Further, they must be ambulatory, able to communicate, not dangerous to themselves or others, and have sufficient vision to function.

In addition, it is charged that placement procedures violate the plaintiffs right to due process, since there are neither prior hearings nor periodic reviews of assignments.

Because of their denial of a public education and the results of such a denial, the plaintiffs are seeking damages of \$15,000 each. They are further asking that the Court: (a) declare that all children between three and 21 have a right to a free public education; (b) declare that existing practices are unconstitutional; and (c) direct the defendants to provide plaintiffs with compensatory services.

Action in the case is pending.

CATHERINE D. v. JOHN C. PITTENGER, Civil Action No. 74-2435 (E.D. Pa., filed September 20, 1974)

Catherine D., the plaintiff, is a minor of school age who is bringing this class action on her own behalf and on behalf of all other "exceptional" children in Pennsylvania. It is alleged that this class of children is eligible for a free public education by statute, but have been or will be denied an opportunity to contest the appropriateness of their "change in educational placement."

The defendants are John C. Pittenger, Secretary of Education of the Commonwealth of Pennsylvania, The State Board of Education, the Great Valley School District and its Superintendent, and the Chester County Intermediate Unit No. 24 and its Executive Director.

Catherine D. is a 15 year old of above average intelligence with a history of educational difficulties. During the 1973-74 school year she attended Great Valley High School, and was frequently emotionally disturbed, absent from school and was not achieving up to her expected potential.

On March 11, 1974, on the basis of a psychological and psychiatric evaluation, the plaintiff was enrolled by her parents at a state-aided and approved private school, at their own expense. Attendance for the plaintiff allege that her educational performance has improved and that her behavior has stabilized. On April 11, 1974, the plaintiff was requested by the two defendant school districts. As a result of the screenings, she was labeled "exceptional". On August 12, 1974, the plaintiff was assigned by the Great Valley School District to another school for the term beginning September 4, 1974.

The plaintiff and her parents were not given the opportunity of a hearing, which prevented them from: (a) presenting expert psychological and educational evidence regarding the appropriateness of the plaintiff's placement and; (b) presenting evidence that such placement would exacerbate the plaintiff's problems and be disruptive to her recent educational progress.

Despite repeated requests by the plaintiff's parents, the defendants have refused to grant a hearing.

The thrust of the plaintiff's argument is that inappropriate placement is tantamount to withholding from the plaintiff her right to a constitutionally mandated education, and thus will cause her further irreparable psychological and educational harm. The policies of the defendants deny the plaintiff procedural due process and equal protection in violation of the Fourteenth Amendment of the U.S. Constitution. The policies also violate Pennsylvania's "Local Agency Law", (Pa. Stat. Ann., Title 53, Secs. 113.01, et. Seq.).

The plaintiffs are seeking that the Court:

1. Assume jurisdiction.
2. Declare the defendant's policies to be unconstitutional.
3. Declare that such policies violate state law.
4. Order that defendants cannot alter the plaintiff's educational placement without affording notice and the opportunity for a hearing.
5. Enter a preliminary injunction directing the defendants to reimburse the plaintiffs for payments to the Private Program.
6. Order the defendants to hold a hearing for the plaintiff.
7. Order the defendants to furnish plaintiff with copies of public school records and reports which form the basis for placement changes.
8. Order the State Board of Education to promulgate stringent rules and regulations governing hearings to be held whenever a school district proposes a change in the educational placement of any exceptional child.

IN THE INTEREST OF G. H., A CHILD, (N.D. Supreme Court, Civil Action No. 8830, decision rendered April 30, 1974)

G. H., the plaintiff, is a 17 year old severely physically handicapped child who is educable and who has spent most of her life at the Crippled Children's School, a private institution located in Jamestown, North Dakota. When she was originally placed in the school her family resided in Williams County, N.D., in Williston School District No. 1.

Since G. H.'s parents were unable to pay her tuition, the Williams County Welfare Board paid the cost of keeping her in a foster home in Jamestown, while Williston School District No. 1 contracted with the Crippled Children's School to pay her tuition. Sixty percent of the tuition is reimbursed by the State Department of Public Instruction.

The difficulty arose in 1969 when G. H.'s parents moved out of state. At that time Williston School District stopped paying her tuition, although her payment at the foster home was continued and she remained at the Crippled Children's School, which was not reimbursed.

In March, 1970, an officer of the State Public Welfare Board petitioned the district court of Stutsman County (the location of the special school) to make a determination concerning the care, custody and control of G. H.

After a hearing, the district court found on May 14, 1970, that

1. G. H. is a deprived child.
2. Her parents were unable to provide for her.
3. The causes of her deprivation were not likely to be remedied.
4. The most suitable place for her was the Crippled Children's School.
5. The parents had not established permanent residence outside the Williston area.

The court then ordered that:

1. G. H. be taken under the juvenile jurisdiction of the court.
2. She be under the care of the Williams County Welfare Board.
3. Her father pay \$55.00 a month to the Welfare Board if his income warranted it.
4. Williston School District pay the costs to the Crippled Children's School retroactively to September 11, 1969, and continuously after that so long as G. H. remains at the school.

On May 13, 1971, the school district moved the court to vacate that portion of the order requiring it to pay the tuition on grounds of (1) mistake or excusable neglect; and (2) misrepresentation of an adverse party. The register of deeds of Williams County supported the motion in showing that no real property was owned by G. H.'s father in the county.

After hearing the motion, the court on July 27, 1971 vacated its prior order and determined that her tuition was the obligation of the Special Education Division of the State Department of Public Instruction for 1970-71 and thereafter. The foster home responsibility was maintained by the Welfare Department.

Subsequently, the Special Education Division challenged the order, asserting that it was unauthorized to pay tuition except as reimbursement to school districts. After a hearing, the court again amended its order to provide that the Public Welfare Board and the County Board be required to pay the tuition, retroactive to September, 1970.

The Williams County Welfare Board attempted to file a "Special Appearance and Petition for Leave to be Heard and to Vacate Amended Order, June 5, 1973", but the trial court refused to consider it.

The State Welfare Board (now the Social Service Board of North Dakota) and the County Welfare Board appealed the decision, on the basis of questioning the responsibility for tuition with the North Dakota Association for Retarded Citizens participating in the suit as amicus curiae.

In the appeal, the attorneys for the plaintiff argued that under the North Dakota Constitution there is a right to education for all children. They held that denying G.M. an education would be an unconstitutional denial of equal protection under the Federal and State Constitutions and of the Due Process and Privileges and Immunities Clauses of the N.D. Constitution.

A decision was reached in the Supreme Court of North Dakota on April 30, 1974. The following points were made:

1. The right to a public school education is guaranteed by the state Constitution.
2. The residence of a child determines the identity of the school district responsible for providing an education.
3. Placing a child in a special program outside the district does not change the residence of the child.
4. The residence of a child who is made a ward of the state is separate from that of her parents.

RIGHT TO TREATMENT

WYATT v. ADERHOLT, 334 F. Supp. 1341 (M.D. Alabama, 1971), 325 F. Supp. 781 (N.D. Alabama, 1971)
 WYATT v. STICKNEY, 344 F. Supp. 378 (M.D. Alabama, 1972), *appeal docketed*, No. 72-2634, 5th Cir., (argument heard December 6, 1972).

The action, originally focusing on the claim of state hospitalized mentally ill patients to receive adequate treatment, began in September, 1970, in Alabama Federal District Court. In March, 1971, Judge Johnson ruled that mentally ill patients involuntarily committed to Bryce Hospital were being denied the right "to receive such individual treatment as (would) give each of them a realistic opportunity to be cured or to improve his or her mental condition." The court gave the defendants six months to upgrade treatment, to satisfy constitutional standards, and to file a progress report. Prior to the filing of that report, the court agreed to expend the class to include another state hospital for the emotionally ill and the mentally retarded at the Partlow State School and Hospital.

The defendant's six month progress report was rejected by the court and a hearing was scheduled to set objectives and measurable standards. At the hearing in February, 1972 evidence was produced which led the court to find "the evidence . . . has vividly and unambiguously portrayed Partlow State School and Hospital as a warehousing institution which because of its atmosphere of psychological and physical deprivation, is wholly incapable of furnishing habilitation to the mentally retarded and is conducive only to the deterioration and the debilitation of the residents." The court further issued an emergency order "to protect the lives and well-being of the residents of Partlow." In that order the court required the state to hire within 30 days 300 new aide-level persons regardless of "former procedures," such as civil service. The quota was achieved.

On April 13, 1972, a final order and opinion setting standards and establishing a plan for implementation was released. In the comprehensive standards for the total operation of the institution are provisions for individualized evaluations and Plans and Programs relating to the habilitation ("the process by which the staff of the institution assists the resident to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental, and social efficiency"). Habilitation includes, but is not limited to, programs of formal structured education and treatment of every resident. Education is defined within the order as "the process of formal training and instruction to facilitate the intellectual and emotional development of residents." The standards applying to education within the order specify class size, length of school year, and length of school day by degree of retardation.

Finally, the court required the establishment of a "human rights committee" to review research proposals and rehabilitation programs, and to advise and assist patients who allege that the standards are not being implemented or that their civil rights are being violated. Further, the state must present a six-month progress report to the court and hire a qualified and experienced administrator for the institution.

In December, 1972, the U.S. Court of Appeals for the 5th Circuit heard arguments on the appeals of both Wyatt and Burnham which had been joined.

In November, 1974, the lower court decision was upheld by the Court of Appeals.

BURNHAM v. DEPARTMENT OF PUBLIC HEALTH OF STATE OF GEORGIA, 349 F. Supp. 1335 (N. D. Georgia, August 3, 1972)
appeal docketed, Civil Action No. 72-3110, 5th Cir., August 1972 (argument heard December 6, 1972).

This is a suit seeking class action status on behalf of all patients voluntarily or involuntarily committed to any of the six state-owned and operated facilities named in the complaint and operated for the diagnosis, care and treatment of mentally retarded or mentally ill persons under the auspices of the Department of Public Health of the State of Georgia. Each of the named plaintiffs is or has been a patient at one of these institutions. The case was filed on March 29, 1972, in the United States District Court for the Northern District of Georgia.

Defendants in this case are the Department of Public Health, the Board of Health of the State of Georgia, and Department and Board members and officials, the superintendents of the six named institutions, and the judges and courts of ordinary of the counties of Georgia, which are the courts specifically authorized by Georgia law to commit a person for involuntary hospitalization.

The complaint alleges violations of the 5th, 8th, and 14th Amendments to the U.S. Constitution. It seeks a preliminary and permanent injunction and a declaratory judgment. Specifically, the declaratory relief sought includes a court finding that the patients in the defendant institutions have a constitutional right to adequate and effective treatment, a court finding that each of the institutions named in the complaint is currently unable to provide such treatment, and a holding by the Court that constitutionally adequate treatment must be provided to the patients in the institutions named in the complaint.

The plaintiffs requested the following:

1. That defendants be enjoined from operating any of the named institutions in a manner that does not conform to constitutionally required standards for diagnosis, care and treatment.
2. That defendants be required to prepare a plan for implementing the right to treatment.
3. That further commitments to the defendant institutions be enjoined until these institutions have been brought up to constitutionally required standards, and
4. That the court award reasonable attorney's fees and costs to counsel.

Defendants filed an answer to plaintiffs' complaint on April 21, 1972, in which they raised several legal defenses, such as lack of jurisdiction, and moved to dismiss on several grounds.

On August 3, 1972, Judge Sidney D. Smith, Jr. granted the defendant's motion for summary judgment and dismissed this case. The ruling of the court centered on the following major points:

1. The court could find no legal precedent to allow for the declaration that there exists a "federal constitutional right to treatment (to encompass 'care' and 'diagnosis') for the mentally ill." Based on this finding, the judge ruled that the action could not be maintained.

2. Judge Smith, in his decision, disagreed with the *Wyatt* Alabama decision, primarily on the basis of the absence of a federal statute requiring the right to treatment. He added that "the factual context in these Alabama decisions (budgetary cuts by the state legislature causing further deterioration of an existing deficient institutional environment) is also substantially different from the existent situation in the Georgia mental health institutions."

3. The court also held that "... a conclusion as to the lack of jurisdiction over the person of named defendants is also compelled by the seventh Amendment to the U.S. Constitution." This conclusion was based upon the failure to demonstrate the "... denial of a constitutionally protected right nor a federally guaranteed statutory right."

4. Judge Smith also commented about the appropriateness of the courts in defining "adequate" or "constitutionally adequate" treatment.

Specifically he wrote that these questions "... duty judicial identity and therefore prohibit its breach from being judicially defined." Further, he acknowledged the defendants' argument that "the question of what in detail constitutes 'adequate treatment' is simply not capable of being spelled out as a mathematical formula which could be applied to and would be beneficial for all patients. Everyone knows that what might be good treatment for one patient could be bad or even fatal for another."

In December, 1972, the U.S. Court of Appeals for the 5th Circuit heard arguments on the appeals of both Burnham and Wyatt, which had been joined. This court, in November, 1974, reversed the lower court decision in Burnham, rejecting the arguments against a constitutional right to treatment. The case was sent back to the lower court by the Appeals Court for retrial.

RICCI v. GREENBLATT, Civil No. 72-400F (D. Mass., filed Feb. 7, 1972)

This is another class action suit regarding the right to treatment in institutions. The plaintiffs were children in the Belcherstown State School in Massachusetts and the Massachusetts Association for Retarded Children, who like in the Wyatt, Parisi, and New York Association for Retarded Children actions, alleged violations of their constitutional rights. The defendants were various state officials and officials of the school. Motions for a temporary restraining order and preliminary injunction were granted by the court in February, 1972, which served to maintain the status quo until litigation was completed.

Among the provisions of these orders was that "the defendants develop comprehensive treatment plans for the residents which include adequate and proper educational services." On April 20, 1972, the defendants had filed answers to all allegations of the plaintiffs' complaint.

This case was reassigned to another district court judge, and a contempt motion was filed against the defendants for their failure to carry out issued orders.

On November 12, 1973, a Consent Order was entered into by both parties. It stated that to protect the constitutional rights of patients, the following were required: (1) renovation of the physical plant, (2) increased staff, (3) increased program capacity, and (4) development of community alternatives.

NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN v. ROCKEFELLER AND PARISI v. ROCKEFELLER, Case Nos. 72C-356 (E.D. N.Y. filed March 17, 1973) and 72C-357 (S.D. N.Y. 1972)

These two actions were filed together in the U.S. District Court for the Eastern District of New York. Both alleged that the conditions at the Willowbrook State School for the Mentally Retarded violated the constitutional rights of the residents. These class action suits are modeled after the *Wyatt v. Adgerholt* (Partlow State School and Hospital, Alabama) case.

Extensive documentation was presented by the plaintiffs alleging the denial of adequate treatment. The evidence touched all elements of institutional life including: overcrowding, questionable medical research, lack of qualified personnel, insufficient personnel, improper placement, brutality, sequestration, etc. It is alleged in the *Parisi, et al. v. Rockefeller* complaint that "no goals are set for the education and habilitation of each resident according to special needs and specified needs of training." It was specifically charged that 82.7 percent of the residents are not receiving school classes, 56.3 percent are not receiving pre-vocational training, and 97.1 percent are not receiving vocational training.

The plaintiffs in *Parisi, et al.* are seeking declaration of their constitutional rights, establishment of constitutionally minimum standards for applying to all aspects of life, due process requirements to determine a "developmental program" for each resident, development of plans to construct community-based residential facilities and to reduce Willowbrook's resident population, cessation of any construction of non-community based facilities until the court determines that sufficient community based facilities exist, and appointment of a master to oversee and implement the orders of the court.

Both complaints include specific mention of the necessity for including within "developmental plans" and subsequent programs, appropriate education and training.

In an April 10, 1973, 80-page Memorandum and Order, Judge Orrin G. Judd declined to rule that mentally retarded residents of Willowbrook have a constitutional right to adequate habilitation. He did, however, find that they do have a constitutional right to be free from harm and ordered appropriate relief. In its decision, the court noted that a number of significant steps had been taken since the filing of the suit to improve Willowbrook including the closing of admissions and a transfer of residents from Willowbrook to other institutions; the elimination of seclusion practices; administrative changes including the appointment of a new director of education and training; establishment of a behavior modification project; and an expansion of efforts to recruit staff.

Subsequent to his finding no constitutional right to treatment for Willowbrook's residents, Judge Judd did specify that: "Since Willowbrook residents are for the most part confined behind locked gates, and are held without the possibility of a meaningful waiver of their right to freedom, they must be entitled to at least the same living conditions as prisoners. The rights of Willowbrook residents may rest on the Eighth Amendment, the Due Process Clause of the Fourteenth Amendment, or the Equal Protection Clause of the Fourteenth Amendment."

The court held that among the rights possessed by Willowbrook's residents are the right to protection from assaults by other residents or staff; the right to conditions conforming to "basic standards of human decency"; the right to medical care; the right to exercise and have outdoor recreation; the right to adequate heat during cold weather; and the right to the necessary elements of basic hygiene. Judge Judd also ruled that the defendants should quickly increase the number of ward attendants, physicians, nurses, physical therapists and recreation therapists with salary ranges established by the court if those developed by the state were inadequate to attract the needed personnel. Finally, the court required that the defendants file periodic reports indicating their progress in conforming to the court's order.

On May 22, 1973, the court issued a modified order in which it reserved making "final judgment with respect to the plaintiffs' constitutional claims of equal protection and the right to treatment or habilitation" until further evidence, expert testimony and legal argument were presented. The court also ruled that the FBI should be permitted to monitor the implementation of the earlier order.

Hearings on the right to treatment issue are pending.

WELBORN v. LIRINS, 4-72 Civil Action No. 451 (D.C. Minn., 4th Div., filed August 30, 1972, 373 F. Supp. 487 (1974))

In this action six plaintiffs are named as representatives of a 3,500 member class—persons presently in Minnesota's state hospitals for the mentally retarded. Named defendants are the present and former acting Commissioners of Public Welfare and the chief administrator of each of the state's six hospitals.

The plaintiffs include severely and moderately retarded persons who are allegedly denied their right to due process of law since they do not receive "... a constitutionally minimal level of 'habilitation,' a term which incorporates care, treatment, education, and training." It is specifically charged that the plaintiffs and others similarly situated are not provided with a humane psychological and physical environment. The complaint presents supporting evidence that some residents live in "old, poorly designed and hazardous" buildings not meeting State Board of Health safety and health standards, "over-crowded dormitories," bleak accommodations, and improperly equipped bathroom and toilet facilities. Additionally, it is indicated that residents are "subject to threats and physical assaults by other residents," improperly clothed, and denied any personal privacy.

It is further alleged that there is both an insufficient quantity of staff and insufficiently trained staff necessary to provide appropriate programs of habilitation. Due to staff shortages many residents have been forced to work in the institution as employees yet, according to the complaint, are denied payment as required by the Fair Labor Standards Act. Another allegation is that the "defendants have failed and refused to plan for and create less restrictive community facilities..." even though many members of the class could function more effectively in such programs.

It is further argued that "the final condition for constitutionally adequate habilitation is the preparation for each resident of an individualized, comprehensive habilitation plan as well as a periodic review and re-evaluation of such a plan. On information and belief, defendants have failed to provide plaintiffs and the class they represent with a comprehensive habilitation plan or to provide periodic review of these plans."

The plaintiffs are seeking a judgment to include the following:

1. A declaratory judgment that Minnesota's state institutions "... do not now meet constitutionally minimal standards of adequate habilitation including care, treatment and training."

2. A declaratory judgment specifying constitutionally minimal standards of adequate habilitation for mentally retarded persons confined in the state institutions under the supervision and management of the Commissioner of Public Welfare.

3. Injunctions preventing defendants "from failing or refusing to rectify the unconstitutional conditions, policies and practices" described in the complaint and requiring them to "promptly meet such constitutionally minimal standards as this Court may specify."

4. Injunctions requiring the defendants "to pay plaintiffs and the class they represent working in the named institutions the minimum wage established pursuant to the Fair Labor Standards Act as amended, 29 U.S.C. Sec. 201 et. seq." This was dropped from the suit after the complaint was originally filed.

5. Appointment of a master.

6. Awarding of costs to the plaintiffs.

Added to the complaint was legal theory regarding cruel and unusual punishment (see *N.Y. STATE ASSOCIATION FOR RETARDED CHILDREN AND PARISI v. ROCKEFELLER*).

During a pre-trial conference in the spring, an agreement was reached to proceed with trial only against the Cambridge State Hospital. Pending the outcome, cases against the other five facilities are being held in abeyance.

The trial on this case began September 24, 1973, and concluded on October 10, 1973. Shortly after the trial the Judge visited the Cambridge facility for a day.

The Court issued an order on February 15, 1974. It decreed that plaintiffs, as a class, have: (1) a right to adequate care and treatment; (2) a right to the least restrictive practical alternative to hospitalization; (3) that the state has affirmative duty to provide such alternatives; (4) that certain practices and conditions at Cambridge State Hospital constitute violations of plaintiffs constitutional rights under the due process clause of the Fourteenth Amendment and the cruel and unusual punishment clause of the Eighth Amendment.

The decision ordered that further issues be deferred and that within 20 days considerations would be made regarding the findings of fact, conclusions of law, and relief that may be granted.

In September, 1974, the Court issued a Memorandum, Findings of Fact, Conclusions of Law, and Order for Judgment. The Court agreed with expert testimony in the case which showed that intellectual capacity and functional ability could be improved through a

comprehensive program of habilitation, a basic component of which is normalization—a process by which the living conditions, appearance, and activity of a retarded individual approximate as nearly as possible those found in the rest of society.

To rectify the inadequate existing conditions at Beatrice, the Judge ordered the following:

1. Each resident must be provided with an individualized treatment program which will be periodically reviewed, evaluated and altered.
2. If services and programs are available in the community, no mentally retarded person should be institutionalized. No one classified as borderline, mildly, or moderately retarded shall be admitted to Beatrice unless he/she suffers from psychiatric or emotional disorders and could be treated in the hospital's Mental Health Treatment Services.
3. The Commissioner must bring the resident living staff up to levels prescribed by the U.S. Department of Health, Education and Welfare — (1:2 for the severely and profoundly retarded and 1:2.5 for the moderately retarded) within 180 days of the Order. Professional staff, such as registered nurses, physicians, physical therapists and social workers must be employed in set staff-to-resident ratios. Support staff for both groups must also be recruited. The Commissioner must request a budget increase from the Governor.
4. Additional equipment and materials necessary to carry out adequate programs of care and treatment must be purchased within 90 days of the Order.
5. Seclusion is not to be permitted unless a resident presents a clear, immediate and continuing danger to himself or others; then the resident must be checked every half hour. Physical and chemical restraints may be used only in very restricted instances.
6. No residents may be transferred to a community residence unless it is licensed. The court must be provided with a written plan to develop alternative residential care for all residents.
7. Copies of the Order were to be given to all supervisors and posted at every staff office, nursing station and visitor's lounge.

The court maintained continuing jurisdiction over the case in order to be able to dictate more demanding requirements if the hospital authorities failed to comply with the Order.

HORACER v. EXON, Civil Action No. CV 72-L-298 (D.C. Neb., filed Sept. 28, 1972; 357 F. Supp. 71 (D. Neb., 1973))

This late 1972 class action complaint against Governor James J. Exon of Nebraska, the Director of the State Department of Public Institutions, the Director of Medical Services, the Director of the State Office of Mental Retardation and the Superintendent of the Beatrice State Home for the Mentally Retarded focuses on allegations that the residents of the state home "... are not receiving a constitutionally minimal level of 'habilitation,' a term which incorporates care, treatment, education, and training" and the exercise of constitutional rights including personal liberty.

The plaintiffs include five mentally retarded persons ranging in age from 13 to 26 and demonstrating borderline to severe mental retardation. These persons were residents in Beatrice from one and a half to ten years and all regressed since their initial admission. It is alleged that none were provided with appropriate education and/or training programs during their residence at Beatrice. An additional plaintiff is the Nebraska Association for Retarded Children.

The numerous allegations presented in the complaint include the following:

1. The approximately 1,400 residents of the Beatrice facility are all capable of benefiting from habilitation, yet have been denied from receiving same by the defendants.
2. Although a basis for the provision of habilitation services, individual treatment plans have not been developed for any residents.
3. "The environment at Beatrice is inhumane and psychologically destructive." Substantive charges listed include old, hazardous, and inadequately cooled and ventilated housing, lack of privacy, inadequate toilet and hygienic equipment and facilities, overcrowding, restrictive mail and telephone policies, improper clothing, inadequate diet and food preparation procedures, and finally the lack of sufficient therapy, education, or vocational training opportunities for the residents.
4. A shortage of all types of staff and the presence of many untrained staff, particularly direct-care personnel.
5. The absence of evaluation and review procedures to determine resident status and program needs.
6. Each Beatrice resident "... could be more adequately habilitated in alternatives less drastic than the conditions now existing at Beatrice." In this regard it is asserted that the defendants have failed to discharge residents who could live in less restrictive environments and also failed to plan and develop sufficient community facilities to meet this need.
7. Numerous violations of the equal protection clause of the Fourteenth Amendment including the unreasonable, arbitrary, and capricious classification of some residents as mentally retarded, the denial of equal education opportunities provided to children in the community, the expenditure of greater funds for the hospitalized mentally ill and the maintenance of standards in the institution that are "markedly inferior" to community programs.
8. Many residents are required to engage in non-therapeutic work for token or no compensation thus violating constitutional provisions that prohibit enforced labor except as punishment for criminal acts.
9. The use of solitary confinement, strait-jackets and other restrictive devices and practices constitutes unlawfully cruel and unusual punishment.

The following relief is sought:

1. The action is to be classified as a class action.
2. The violations alleged are constitutional rights and are present rights which must immediately be respected.
3. A judgment indicating Beatrice does not provide constitutionally minimum standards of care and that the court will specify such minimum standards.
4. An injunction requiring the rectification of all unconstitutional conditions, policies, and practices.
5. A restriction preventing the defendants from building any non-community based facilities until the court determines that such programs are sufficiently available.
6. Enjoin defendants from admitting any more residents to Beatrice until minimum standards are met as determined by the court.
7. Require the provision of sufficient additional habilitation services to compensate for the regression and deterioration the Beatrice residents have suffered.
8. A judgment "... declaring that the community service Programs are the constitutionally required least restrictive alternative for the habilitation of the mentally retarded in Nebraska."
9. A master be appointed.
10. The court retain continuing jurisdiction.
11. Plaintiff's attorneys' fees and the costs of this action.

A motion to dismiss the suit patterned after *Burnham* was filed by the defendants but was denied on March 23, 1973. In its memorandum denying the motion to dismiss the court said:

"The allegations that the conditions of confinement at the Beatrice State Hospital are violative of the Eighth Amendment's ban on cruel and unusual punishment would appear to fall within the purview of the Civil Rights Act. It must be noted that the use of cruel and unusual punishment applies not only to sentences imposed as judicial proceedings, but to conditions of confinement as well."

In the same order the Judge allowed the National Center for Law and the Handicapped to enter the case as amicus curiae (friend of the court.)

Trial was scheduled for December 1974; no decision has yet been issued.

MARYLAND ASSOCIATION FOR RETARDED CITIZENS v. NEIL SOLOMON ET AL, Civil Action No. 74-228 (U.S. Dist. Ct., Dist. of Maryland)

This class action was filed on behalf of all persons who are or who may become residents of Henryton Hospital Center, Howard County, Maryland. The class includes residents who have been labelled mentally retarded regardless of the degree of severity of their handicap. The class is represented by three residents of Henryton who are labelled mentally retarded. The defendants are Neil Solomon, Secretary of Health and Mental Hygiene, the Deputy Director of the State Mental Retardation Administration, the Superintendent of Henryton, the Comptroller and Treasurer of the state, and Marvin Mandel, Governor.

The complaint alleges violations of plaintiff's rights under the 1st, 4th, 5th, 6th, 8th, 9th, 13th and 14th Amendments to the U.S. Constitution. The plaintiffs are seeking to ensure the following rights for themselves and for members of their class:

1. The right to a hearing prior to commitment
2. The right to habilitation
3. The right to humane and decent living conditions
4. The right to Protection from harm
5. The right to an equal and adequate opportunity to realize developmental potential
6. The right to fair procedures in determining suitable habilitation settings
7. The right to habilitation in the least restrictive environment possible
8. The right to just payment for labor
9. The right to receive, hold and dispose of property

Attorneys for the plaintiffs charge that the residents of Henryton have been unreasonably classified and subjected to discrimination. Although they have been labelled retarded, they have been denied habilitation and personal liberty. As a result, it is alleged, many residents have deteriorated since their admission, not because of mental retardation, but because of prolonged deprivation in a barren, prison-like environment.

The suit seeks recognition as a class action, and that a three-judge court determine whether Article 98A of the Annotated Code of Maryland is unconstitutional because it denies plaintiffs a hearing prior to commitment. It also asks that the acts complained of be termed constitutional violations, and that an order be issued: (1) enjoining the defendants from engaging in the violations cited; (2) requiring defendants to present a plan within 60 days that will outline steps they will take to remedy the situation.

The plaintiffs also seek money damages to cover the costs of the proceeding and attorneys' fees.

DONALDSON v. O'CONNOR, 463 F. 2d 807 (8th Cir., 1974)

This case concerns a civil judgment against a state hospital superintendent and five physicians found by a Florida jury to have held Kenneth Donaldson in confinement without meeting minimum standards of treatment. Donaldson was civilly committed in 1957 at age 50 to the state mental hospital at Chattahoochee, Florida, as insane and possibly dangerous. His claims of neglect and erroneous confinement were not heard by a federal court jury until after his release in 1971.

Florida appealed the case because the jury's award of damages against the doctors is outstanding. The state maintained that courts have no way of determining standards of care that physicians must follow, and that doctors should not be personally liable for damages except for charges of malpractice.

The Fifth Circuit Court of Appeals, however, upheld the award of damages, stating that Donaldson was deprived of his liberty without due process, since the only justification for confining him was that he would receive treatment. The state maintained that Donaldson, a Christian Scientist, refused medicine or shock treatments, but the circuit court said that other methods, such as counseling, are available. Florida's Attorney General, Robert L. Shavin, said that the right to treatment, while "attractive" as a legal theory, is impossible to enforce in light of professional disagreement relative to what constitutes adequate therapy.

Shavin admitted, however, that the state had provided a staff of "overworked unpaid staff psychiatrists. In an overcrowded state hospital with a patient-staff ration averaging 500 patients per physician". For this reason, said Shavin, it was unjust to hold the superintendent personally liable for the money damages.

In late 1974 the Supreme Court announced that it would hear the case. An amicus curiae brief has been filed with the court, and action is pending.

GROSS v. STATE OF HAWAII, Civil Action No. 43080 (First Circuit Court, State of Hawaii, filed September 17, 1974)

This is a class action brought by an individual against the state of Hawaii for its failure to provide adequate programs, staff, and facilities, and for its failure to consider alternatives suitable for disadvantaged mentally retarded persons in violation of state and federal law. The class represented in this action is alleged to be the some 700 residents of Waimanalo Training School and Hospital.

The plaintiff is a 14 year old mentally retarded resident of Waimanalo. The defendants are the state and certain state officials: the acting Governor, the Director of the State Department of Budget and Finance, the Director of the State Department of Health, and the Chief Administrator of the Waimanalo Training School and Hospital.

The complaint charges that the alleged purpose of Waimanalo is to provide habilitation for persons commonly referred to as mentally retarded. By failing to provide the necessary elements of "habilitation," the complaint charges that the defendants have interfered with the rights of the residents.

Specifically, the complaint lists the following failings of Waimanalo:

1. No comprehensive review of each resident's mental and physical condition in order to determine individual needs.
2. Insufficient trained staff to provide services necessary for habilitation.

This denies residents:

- (a) training commensurate with their abilities;
- (b) protection against physical assault;
- (c) sufficient time to carry out necessary personal functions (bathing, eating, etc.).

3. The failure to provide adequate staff results in residents being:

- (a) placed in unsupervised and solitary confinement;
- (b) tied to furniture;
- (c) placed in straitjackets;
- (d) confined to locked wards and buildings.

4. Lack of adequate facilities, resulting in residents being required to live in an environment that is inhumane and psychologically destructive.

5. Refusal to explore less drastic alternatives than confinement to Waimanalo. As a result, residents are confined to a "holding institution" which fails to serve a rehabilitative function.

The complaint charges that because of these facts, a majority of Weimans residents have actually regressed since their admission. Their behavior is the result of prolonged deprivation and neglect rather than mental retardation. It is alleged that the following rights of residents are violated: the due process, equal protection, and cruel and unusual punishment clauses of the state and U.S. Constitutions, and both state and federal statutes and regulations governing the administration of facilities such as Weimans.

The plaintiffs seek the following:

1. A declaration that the alleged acts violate the 8th, 9th, and 14th Amendments of the U.S. Constitution and Article I, Sec. 4 and 9 of the Hawaii Constitution.
2. A declaration that Weimans does not meet minimum standards of habilitation.
3. A preliminary injunction for the plaintiffs so that the unconstitutional conditions and policies will be rectified, and that will direct the plaintiffs to meet standards that the court may specify.
4. That defendants be enjoined from appropriating funds for any non-essential state expenditure, or admitting new residents to Weimans, until minimum standards have been met at Weimans.
5. That compensatory habilitation be provided current residents.
6. That a master be appointed.
7. That the plaintiff be awarded damages.

The defendants filed an answer to the complaint on October 8, 1974, in which they denied the major portions of the allegations made by the plaintiffs.

The suit was filed by a private attorney, but the Hawaii Association for Retarded Citizens has voted to intervene as a party plaintiff. Counsel for the plaintiffs is now preparing for discovery procedures.

PLACEMENT

LARRY P. v. RILES, Civil Action No. C-71-2270 343 F. Supp. 1306 (N.D. Cal., 1972)

This class action suit was filed in late November, 1971, on behalf of the six named Black, elementary school aged children attending classes in the San Francisco Unified School District. It is alleged that they have been inappropriately classified as educable mentally retarded and placed and retained in classes for such children. The complaint argued that the children were not mentally retarded, but rather "the victims of a testing procedure which fails to recognize their unfamiliarity with the white middle class cultural background and which ignores the learning experiences which they may have had in their homes." The defendants include state and local school officials and board members.

It is stated that misplacement in classes for the mentally retarded carries a stigma and "a life sentence of illiteracy." Statistical information indicated that in the San Francisco Unified School District, as well as the state, a disproportionate number of Black children are enrolled in programs for the retarded. It is further pointed out that even though state and regulatory procedures regarding identification, classification, and placement of the mentally retarded were changed to be more effective, inadequacies in the processes still exist.

The plaintiffs asked the court to order the defendants to do the following:

1. Evaluate or assess plaintiffs and other Black children by using group or individual ability or intelligence tests which properly account for the cultural background and experience of the children to whom such tests are administered;
2. Reenroll the placement of the plaintiffs and other Black children now in classes for the mentally retarded on the basis of results of culturally discriminatory tests and testing procedures;
3. Prevent the retention of plaintiffs and other Black children now in classes for the mentally retarded unless the children are immediately re-evaluated and then annually retested by means which take into account cultural background;
4. Place plaintiffs into regular classrooms with children of comparable age and provide them with intensive and supplemental individual training thereby enabling plaintiffs and those similarly situated to achieve at the level of their peers as rapidly as possible;
5. Remove from the school records of these children any and all indications that they were/are mentally retarded or in a class for the mentally retarded and ensure that individual children not be identified by the results of individual or group I.Q. tests;
6. Take any action necessary to bring the distribution of Black children in classes for the mentally retarded into close proximity with the distribution of Blacks in the total population of the school districts;
7. Recruit and employ a sufficient number of Black and other minority psychologists and psychometrists in local school districts, on the admission and planning committees of such districts, and as consultants to such districts so the tests will be interpreted by persons adequately prepared to consider the cultural background of the child. Further, the State Department of Education should be required in selecting and authorizing tests to be administered to school children throughout the state, to consider the extent to which the testing development companies utilized personnel with minority ethnic backgrounds and experiences in the development of culturally relevant tests;
8. "Declare pursuant to the Fourteenth Amendment to the United States Constitution, the Civil Rights Act of 1964, and the Elementary and Secondary Education Act and Regulations, that the current assignment of plaintiffs and other Black students to California mentally retarded classes resulting in excessive segregation of such children into these classes is unlawful and unconstitutional and may not be justified by administration of the currently available I.Q. tests which fail to properly account for the cultural background and experience of Black children."

On June 20, 1972, U.S. District Court Judge Robert Packham of the Northern District of California issued an order and memorandum for a preliminary injunction requiring that "... no Black student may [in the future] be placed in an EMR class on the basis of criteria which rely primarily on the results of I.Q. tests as they are currently administered if the consequences of use of such criteria is racial imbalance in the composition of EMR classes."

Judge Packham in issuing this order determined that the incorrect placement of children in classes for the educable mentally retarded causes irreparable injury. Secondly, he pointed out that the I.Q. test as alleged by the plaintiffs is in fact culturally biased. Third, he discussed the statistical evidence gathered in San Francisco and the state of California that demonstrates that if the assumption is made that intelligence is randomly distributed, then children requiring EMR programs should be proportionately representative of all races. Yet the statistical data indicates that many more Black than white children are classified educable mentally retarded and subsequently placed in special programs.

Because this pattern suggests the "suspect classification" of Black children as an identifiable class, the judge felt that the burden of demonstrating that the use of the IQ test is not discriminatory falls to the school district. The San Francisco School District while not contesting the alleged bias of standardized IQ tests did point out that "... the tests are not the cause of the racial imbalance in EMR classes, or that the tests, although racially biased, are rationally related to the purpose for which they are used because they are the best means of classification currently available." The court concluded that the school district did not effectively demonstrate "... that I.Q. tests are rationally related to the purpose of segregating students according to their ability to learn in regular classes, at least insofar as these tests are applied to Black students."

The court also commented that although California law and regulations regarding the classification of children as educable mentally retarded require the collection of extensive information, it is the I.Q. score which is given the most weight in final decision-making. Finally, the judge indicated that this use of the I.Q. score deprived Black children of their right of equal protection of the laws.

In granting the preliminary injunction Judge Packham stated that "the Court is now inclined to grant any of the specific forms of relief which plaintiffs seek." He required the Black children currently enrolled in EMR programs must stay there "... but their yearly

re-evaluations must be conducted by means which do not deprive them of equal protection of the laws." Similarly, no action is required to compensate Black students who are wrongfully placed at some time in the past.

An aspect of this order (343 F. Supp. 1308) was argued in the Ninth Circuit Court on April 8, 1974 and is awaiting decision. Also pending before the district court are motions for injunctive relief statewide, including abolition of standardized I.Q. tests for use in placing Black students in EMR classes and relief to reduce disproportionate placement of Blacks in the classes. A motion to enforce the 1972 order and for contempt against the San Francisco School District is also pending.

GUADALUPE ORGANIZATION, INC. v. TEMPE ELEMENTARY SCHOOL DISTRICT No. 3, Civil Action No. 71-438 PHX (D. Ariz., May 9, 1972)

This Arizona case was brought by the Guadalupe Organization, Inc. regarding the disproportionate number of bilingual children enrolled in classes for the mentally handicapped. The action was stipulated by both parties and approved by the court on May 9, 1972, and provides for the following:

1. Re-evaluation of children assigned to the Tempe special education program for the mentally retarded to determine if any bilingual children had been incorrectly assigned to such placements.
2. Prior to the assignment of a bilingual child to the program for the mentally retarded, the child must be retested in his primary language and have his personal history and environment examined by an appropriate "professional adviser," such as a psychologist or social worker.
3. The records of children found to be incorrectly assigned to the programs must be corrected.
4. All communications from the school to the family of a bilingual child must be in the family's primary language and must include information about the success of the special education program and notice of their right to withdraw their child from it.

STEWART v. PHILIPS, Civil Action No. 70-1188-F (D. Mass., filed Sept. 14, 1970)

In this 1970 class action seven poor children placed in Boston public special school classes for the mentally retarded contest the manner in which they were classified and placed in these programs. The children range in age from eight to 12 and have spent from one to six years in special class programs for the mentally retarded. The named plaintiffs are subdivided into three groups as follows:

Group I — Poor or Black Boston children who are not mentally retarded and "... have been, are, or may be denied the right to a regular public school education in a regular class by being misclassified mentally retarded."

Group II — Poor or Black Boston children who are not mentally retarded and "... have been, are, or may be denied the right to be assigned to an educational program created for their special education needs [under applicable state statute] by being misclassified mentally retarded."

Group III — "All parents of students who have been, are, or may be placed in a special class placement, an opportunity to review test scores or the reasons for special class placement, or an opportunity to participate in any meaningful or understanding way in the decision to place the student in a 'special' class."

The defendants include the members of the Boston School Committee (board), the Superintendent and his assistants, the Director of the Department of Testing and Measurements, Director of Special Education, two state education officials, and the State Commissioner of Mental Health.

It is alleged in the complaint that the Group I plaintiffs have simply been misclassified and placed in classes for the mentally retarded while the Group II plaintiffs have been misclassified as mentally retarded and incorrectly placed in special classes for the mentally retarded while in fact they were in need of special programs but for the remediation of handicaps other than mental retardation. It is further alleged that the plaintiff children were so placed because they were perceived as behavior problems.

Specific allegations regarding the misclassification are as follows:

1. The process of classification "... is based exclusively upon tests which discriminate against [plaintiffs] in that the tests are standardized on a population which is white and dissimilar to the [plaintiffs]."
2. The administration and interpretation of the tests by Boston school officials fail "... to distinguish among a wide range of learning disabilities, only one of which may be mental retardation."
3. Classification and placement is made on the basis of a single test score standard and other necessary information is neither gathered nor considered.
4. Boston's "school psychologists" are unqualified to interpret the limited classification devices used in the Boston schools.

Further, the complaint alleges that children in "special classes" which are segregated from the regular class population receive a substantially different education than children retained in regular programs. Such placements, it is alleged result in "... substantial educational, psychological, and social harm ..." which is cumulative. Thus, the longer children are incorrectly retained in special classes, the greater the damage. It is also indicated that even when such children are returned to the regular class they remain irreparably harmed because counterpart children will have continued to make academic progress while the former remained in the special class, educationally static. Reference is also made to the negative stigmatic effect upon the child himself and the educational community by the assigning of the label, mental retardation.

Assigning of the Group I plaintiffs to classes for the mentally retarded when they were not mentally retarded is arbitrary and irrational and "... deprived them of the right to equal protection of the laws in violation of the Fourteenth Amendment in that students who are

similar to the Group I plaintiffs with respect to their educational potential are not placed in classes for the mentally retarded and are permitted to receive a regular education in a regular class." A similar allegation is made of the denial of equal protection of the laws on behalf of the Group II plaintiffs on the basis that similar children are not placed in classes specifically organized to meet their special education needs.

The final series of allegations concerns the Group III plaintiffs and in summary charges that in the process of classifying children ...ntally retarded and subsequently placing them in special classes the Boston city schools have deprived the plaintiffs of procedural due process as guaranteed by the Fourteenth Amendment. The relief sought is as follows:

1. An award of \$20,000 to each named plaintiff and members of the class for compensatory and punitive damages.

2. A permanent injunction specifying that children may neither be placed nor retained in a special class unless a Commission on Individual Educational Needs with members from state agencies, professional associations, the mayor of Boston, the chairman of the Boston school committee and two Boston parents is established to specify appropriate classification procedures, to monitor that tests are administered by qualified psychologists, to establish procedural safeguards for the classification and placement of children in special programs.

3. All children in special classes or on waiting lists be re-evaluated and reclassified and placed as necessary.

4. All children requiring reassignment shall be provided with transitional programs to serve specific individual needs.

5. No child may placed in special classes solely on the basis of an I.Q. score.

The state and city responded to the suit by seeking a dismissal on the grounds that no claim was presented. In addition the state also asserted that they were not proper parties to the action and that the Plaintiffs did not exhaust available administrative remedies.

Plaintiffs' attorneys responded to the motion to dismiss on the basis of no claim by asserting the following:

1. "The arbitrary, irrational and discriminatory manner in which Boston public school students are classified mentally retarded denies them equal protection and due process of law."

2. "The failure to accord Boston public school students an opportunity to be heard prior to denying them the right to receive a regular education, by classifying them as mentally retarded, violates their right to procedural due process."

3. "The plaintiffs have no obligation to exhaust a state administrative remedy under the Civil Rights Act when that remedy is in fact inadequate."

Over a year later defendants moved for summary judgment in their favor claiming that no genuine issue of fact existed. This motion was also denied. Another motion to dismiss was brought by the state defendants on the grounds of mootness: since the Department of Education and Mental Health had jointly issued new regulations providing for detailed evaluation before placement, the defendants claimed that no controversy remained. However, the court ruled that damages may still be obtained for past actions, and so the case has been continued pending a full trial.

RUIZ v. STATE BOARD OF EDUCATION. Civil Action No. 218294 (Sup. Ct. Sacramento County, Cal., filed Dec. 16, 1971)

The three children named in this December, 1971 class action are Mexican-Americans from Spanish speaking homes. They all have or will be administered group intelligence tests. It is alleged that the I.Q. scores obtained from these tests will be used to their detriment in the process of teaching, placing, and evaluating them in school.

The defendants are the State Superintendent of Public Instruction and the members of the State Board of Education.

Such tests are required by state law to be administered to all 6th and 12th grade students for the purpose of obtaining gross measures of public school effectiveness for the public, state agencies and the Legislature. However, while individual scores are not reported to the state, they are, it is alleged, recorded in students' permanent records. It is alleged that these records influence teacher expectations of children's ability to learn, are utilized to place children in tracks or at specific academic levels, are used by school counselors as a basis to encourage participation in college preparatory or vocational programs, and are used by counselors to identify children for further evaluation for possible placement in classes for the mentally retarded.

The complaint contains documentation including personal views, professional opinion and scientific evidence that the I.Q. score by itself is an invalid predictor of educational attainment in non-middle class culture children. Further, the inadequacies of group test scores both from the view of the inadequacies of the testing environment itself and in the absence of background information about the child is discussed. It is further alleged that rather than predicting ability to learn, the tests only report what has been learned.

It is further alleged that when scores such as the group tests are attached to individual children such as the plaintiffs they will "... be irreparably harmed in that they will be denied their right to an education equal to that given all other students" which it is argued is a denial of equal protection of the law as guaranteed by the Fourteenth Amendment.

The final allegation is that the use of given gross I.Q. information by the state and Legislature for planning and development is meaningless since the depressed scores are not truly indicative of the needs of districts with large minority group populations. Decisions, for example, about the location of vocational programs based on this data would be faulty.

The relief sought by the plaintiffs includes:

1. An order preventing the placing of group intelligence tests scores in children's school records.

2. An injunction preventing the attaching of a score obtained from a group intelligence test with the child who obtained the score.
3. An injunction requiring the defendants to remove from all school records, I.Q. scores obtained from a group intelligence test.
4. An injunction preventing the use of group intelligence tests for the purpose of determining aggregate or individual ability for the purpose of allocating funds.

This action is presently in process.

WALTON v. BOARD OF EDUCATION CITY SCHOOL DISTRICT OF GLEN COVE. 68 Misc. 2d 935, 328 N.Y.S. 2d 932 (1972).

Lynn Walton is 15 years old and up until November 5, 1971, was in regular attendance at Glen Cove City High School. On that date Lynn was suspended from school for five days, the maximum period of time for a suspension without convening a hearing. The reason for Lynn's suspension was for "verbally abusing a teacher and refusing to follow her directions." It is alleged in the petition that school authorities informed the petitioner (Lynn Walton's mother) that at the conclusion of the suspension period, Lynn would not be readmitted to school "... but would be placed on home tutoring pending transfer to the board of Cooperative Educational Services (BOCES) School for the Emotionally Disturbed."

The respondents are the town Board of Education, the Superintendent of Schools, and the Principal of Glen Cove High School.

It is specifically alleged that the respondents deprived Lynn of her right to receive an education equal to that of her peers at the regular high school without due process of law as guaranteed by the Fourteenth Amendment. It is further alleged that the suspension was continued in excess of five days by labeling Lynn as "handicapped" or "emotionally disturbed" pending her assignment to the BOCES school. It is argued that the assignment of the labels "handicapped" or "emotionally disturbed" "... was improperly, arbitrarily, and capriciously made, not on the basis of the infant's educational needs, but to justify her permanent exclusion from her regular school without procedural due process." Finally, it is alleged that the assignment of labels results in Lynn Walton being stigmatized and inferior and unfit.

Relief sought includes

1. Annuling the suspension from regular school attendance.
2. Annuling the misclassification of Lynn and assignment of the labels "handicapped" or "emotionally disturbed."
3. Annuling the transfer of Lynn to the BOCES school.

In the ensuing memorandum of law and answer, an issue receiving attention was whether the reassignment of Lynn Walton from her regular high school to home instruction and ultimately to the school for the emotionally disturbed was simply an educational reassignment thus not requiring procedural due process. The petitioner asserts that "it is now well settled that the standard of due process may not be avoided by the simple label which a party chooses to fasten upon its conduct." The respondent answered that the classification and recommendation "... was made according to good and proper and lawful educational practice and policy."

On December 3, 1971, the court issued a show cause order to the respondents. On February 4, 1972, the court granted the relief sought by the petitioner recognizing the school district's violation of procedural due process. On February 28, 1972, a motion by the respondents for vacating the February 4 judgment was denied.

DIANA v. STATE BOARD OF EDUCATION. Civil Action No. C-70-37 RPP IN D. Cal. Jan. 7, 1970 and June 18, 1973).

The plaintiffs in this early class action classification suit were nine Mexican-American school children representing two classes: (a) bilingual Mexican-American children placed in California classes for the mentally retarded; and (b) other young and preschool bilingual Mexican-American children who will be given I.Q. tests which "will inevitably lead to their placement in a class for mentally retarded."

At the outset it is argued that the plaintiff children are not mentally retarded and that the use of highly verbal, culturally biased, improperly standardized (norming population did not include rural Mexican-American children) I.Q. tests result in segregation of California's Mexican-American school age children into classes for the mentally retarded. To support their allegation, plaintiffs reported that during the 1966-67 school year, a California study revealed that 26% of the children in EMR classes were of Spanish surname while similarly named students comprised only 13% of the total student population.

Defendants in this action were the State Superintendent for Public Instruction, State Board of Education, Comptroller of the State, State Treasurer, and the Superintendent and Trustees of the Soledad Elementary School District.

Other supporting data presented were the results of retesting the plaintiff children in English and/or Spanish which revealed that seven of the nine children scored higher than the maximum score used by the local county schools as the ceiling (70 I.Q. for placement in programs for the educable mentally retarded). One of the other two scored exactly 70 and the ninth student was three points below. The average gain was 15 points. This data was contrasted with the original results obtained when the children were tested in English by a non-Spanish speaking examiner and achieved a mean of 63.5 and a range from 30-72.

One further argument presented by plaintiffs is that by remaining in an inappropriate educational assignment, the plaintiff children "fell academically further and further behind their peers" and suffer irreparable injury.

In their complaint the plaintiffs requested the court to issue temporary restraining orders, preliminary and permanent injunction, and to declare, pursuant to the Fourteenth Amendment to the United States Constitution, the Civil Rights Act of 1964, and the Elementary and Secondary Education Act and Regulations that the assignment of Mexican-American students to classes for the mentally retarded resulting in excessive segregation of these children to be unlawful and unconstitutional.

On February 3, 1970, the Northern District Court of California adopted a stipulation and order that contained the following major points:

1. All children whose primary home language is other than English (Spanish, Chinese) must in the future be tested in both their primary language and in English.
2. Mexican-American and Chinese children already in classes for the mentally retarded must be retested in their primary language if this has not already been done and must be reevaluated only as to their achievement on non-verbal tests or sections of tests.
3. Each school district is required to submit to the state a summary of the retesting and re-evaluation and a plan listing special supplemental individual training to be provided to help each misplaced child re-enter regular school programs.
4. Form a new or revised IQ instrument to be used only with children of Mexican-American culture so that future testing will allow Mexican-American children to be compared to the performance of their peers, not the population as a whole.
5. Any school district having a significant disparity between the percentage of Mexican-American students in its regular classes and in its classes for the retarded must submit an explanation setting out the reasons for this disparity.

By mutual agreement of the parties, a period of two years was provided for defendants to comply with the court order. This was primarily due to the expected time needed to develop the new test. On October 31, 1972, however, plaintiffs returned to the court to indicate that defendants had failed to comply with the stipulation and order. On June 18, 1973, another stipulation was adopted by the court stating that although substantial progress was made in eliminating the excessive percentage of Mexican-American children in programs for the educable mentally retarded, the following major steps must occur:

1. The State Department of Education shall send letters to all districts that still present disparities requiring them to adopt a plan that "shall specify goals, including a timetable for reducing the disparity in each of the next three years, so that it is eliminated by September 1978."
2. School districts will annually submit reports to the State Department of Education that indicate the total number of children in educable mentally retarded classes by race and ethnic background.
3. When significant variance continues past 1976, "The State Department will cause a thorough audit of the district's program to be conducted, including the re-evaluation of pupils if necessary."
4. The court will review progress of the order between July 15, 1978 and September 1, 1978.